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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

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*
UNITED STATES OF AMERICA
*
v.
* 12-cr-140-01-PB
* January 9, 2013
* 9:00 a.m.
LISA BIRON
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DAY 2
TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE PAUL J. BARBADORO
AND A JURY

Appearances:

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1 THE CLERK: In the matter of United States of
2 America versus Lisa Biron. For the record, plaintiff
3 has pre-mark Exhibits 1 through 13B. The following
4 exhibits not marked for identification are herewith
5 accepted into evidence, there being no objection by
6 opposing counsel, 10A through 10F. Those exhibits to
7 which objection has been made shall remain marked for
8 identification at this time. They are 1 through 9 and
9 11 through 13B.

10 BEFORE THE COURT

11 THE CLERK: Court is in session and has for
12 consideration a jury trial in United States of America
13 versus Lisa Biron, Criminal Case No. 12-cr-140-01-PB

14 THE COURT: Counsel wanted to see me?

15 MR. MOIR: Just a couple of matters, your
16 Honor. We had a conference in chambers yesterday
17 regarding the 404(b) materials. I just want to make
18 sure --

19 THE COURT: Refresh my memory. Who's the
20 moving party with respect to that? Are you moving to
21 exclude it or are you moving to admit it? I can't
22 remember.

23 MR. MOIR: The government provided a notice to
24 me of 404(b) materials they sought to introduce. I
25 filed an objection to that, a written objection to that

1 and provided that to the court. Yesterday the
2 government responded.

3 THE COURT: Okay, so there isn't a formal
4 motion. I will then treat your objection as a motion in
5 limine to exclude it and your response as an objection.
6 I indicated in the chambers conference -- well, first
7 let me make clear. What was represented to me is that
8 the government proffered to me that at least some of the
9 404(b) evidence that it intends to introduce, we're
10 speaking now of marijuana and alcohol use by the minor
11 prior to or at various points in this case, the
12 government represented to me that a significant portion
13 of that evidence will involve efforts by the defendant
14 to encourage the use of marijuana and alcohol by the
15 minor immediately prior to the production of one or more
16 of the images that are at issue in this case. Is that
17 right, counsel?

18 MR. KAVACAS: That's absolutely right, your
19 Honor.

20 THE COURT: All right. And I indicated my
21 view, tentative view that that did not appear to be
22 404(b) evidence. To the extent your motion is both a,
23 based on 404(b) and Rule 403, I still think I would have
24 to make a ruling on 403. But let me just explain. My
25 thinking is that that evidence, to the extent it

1 involves the, and the government's theory is and the
2 purpose for which it's being introduced, is that it's
3 part of the context in which the images were produced
4 and specifically involved an effort by the defendant to
5 lower the minor's inhibitions to facilitate the
6 commission of the crime, in which case the evidence
7 would not appear to be evidence of other wrongs as
8 defined in the rules of evidence, and instead would be a
9 part and parcel of the criminal act that is indicted,
10 therefore it would not seem to me to be 404(b) evidence
11 at all, I still think I have to evaluate it under rule
12 403, and under the Rule 403 calculus if the evidence is
13 relevant, it's admissible unless the relevant nature of
14 the evidence is substantially outweighed by the danger
15 of something else such as unfair prejudice.

16 In this case it would seem to me that the
17 evidence would be highly relevant, and given,
18 particularly given the nature of the evidence that is
19 going to come in about what was going on when the
20 marijuana and alcohol were being consumed and shortly
21 thereafter, seems to me that there's minimal unfair
22 prejudice that results from admission of the evidence.

23 So I am prepared to rule right now based on
24 the government's proffer, assuming the evidence comes in
25 as the government proffers that it will, that evidence

1 of drug or alcohol use by the minor in the immediate
2 time frame preceding one of the events, one of the
3 charged events is admissible, it's not 404(b), it's
4 admissible, it's relevant, and the relevance is not
5 substantially outweighed by the danger of unfair
6 prejudice or other matter. And then we will talk about
7 the other evidence in a minute.

8 Did you want to say -- your objection to that
9 ruling is of course preserved for the record. Is there
10 anything else you want to say about that?

11 MR. MOIR: Yes. It has to do with beyond what
12 the court is ruling on here. In the government's
13 objection it talks about introducing evidence of alcohol
14 and drug use well beyond these specific incidents.

15 THE COURT: I'm separating the -- I recognize
16 their notice is more broad than that.

17 MR. MOIR: It is.

18 THE COURT: I'm only now asking if you have a
19 comment about the specific issue on which I'm proposing
20 to rule right now. Is there anything else you need to
21 say about that?

22 MR. MOIR: Not on that, your Honor.

23 THE COURT: Okay. So, you're right, the
24 404(b) notice is broader than that and potentially
25 encompasses efforts by the defendant to provide or

1 encourage the use of alcohol or drugs by the victim at
2 any point, and on that I intend to reserve judgment
3 until the evidence is going to be offered. I've
4 explained to the government that my view is that to the
5 extent that it is unconnected with a specific event,
6 it's harder to make an argument that it's not 404(b)
7 evidence. It still could be. I mean, the government
8 could argue, for example, that this is part of the
9 efforts to recruit the victim into this criminal
10 activity that was occurring over a significant period of
11 time and use of alcohol and drugs were part of it, I
12 think that argument becomes somewhat more difficult.
13 The argument about the use in the immediate time frame
14 of the production of the specific acts is in my view a
15 slam dunk and it's not 404(b) evidence. The more remote
16 in time you get from it, the more I would need to see
17 evidence suggesting that this is part of a pattern of
18 recruitment and continuing activity, and I really can't
19 rule on that without hearing the full context of the
20 evidence. So, what I'm going to do is instruct the
21 government not to mention that evidence beyond which
22 I've authorized you to do.

23 Do you feel I've given you clear enough
24 instructions on what you're authorized to do?

25 MR. KAVACAS: I am, your Honor, and I've

1 tailored my opening accordingly.

2 THE COURT: Okay. So, no references to drug
3 or alcohol use by the victim in the opening other than
4 to the extent it's connected with a specific event that
5 is one of the crimes charged in the indictment, and, I
6 mean in the immediate time frame so that the minor would
7 be under the influence at the time the crime was being
8 committed. To the extent that there's evidence of
9 alcohol and drug use by the minor that the government
10 wants to get in later in the trial, they shall not make
11 any reference to it in the opening statement. They
12 shall not make reference to it in front of the jury
13 until they get my permission to do it. They should ask
14 to approach sidebar before it comes in. I will hear the
15 government's proffer and at that time rule on its
16 admissibility, and hear, of course, the defendant's
17 objection before I do so. And you should instruct your
18 witnesses not to mention drug or alcohol use by minors
19 unless specifically -- about the victim unless
20 specifically asked to, a direct question about it, they
21 shouldn't volunteer it or give an answer that's more
22 expansive than what's called for in which they include
23 that unless I make a ruling that it is authorized.

24 So, in short I am denying the motion in part
25 and reserving judgment on it in part until the evidence

1 is going to be offered so I have a more complete factual
2 record on which to make the 404(b) and 403 assessments.
3 Okay?

4 MR. MOIR: The other issue would be drug and
5 alcohol use by the defendant in this case. I would
6 understand that the court's ruling would be certainly
7 somewhat equivalent regarding drug and alcohol use
8 surrounding the incidents that --

9 THE COURT: Well, I don't know, for example,
10 the -- I would need to know, I would need to -- I don't
11 know right now what that evidence is, but based on the
12 conversations we had in chambers yesterday there's at
13 least some ongoing interaction between the men that are
14 having sex with the victim here and the defendant, and
15 it may be justifiable to allow evidence of drug or
16 alcohol use between the defendant and one of these
17 people who ends up having sex with the defendant to tell
18 the complete story. But that shouldn't be mentioned in
19 the opening statement. It's, again, part of that area
20 that I have to hear exactly what it's being offered for,
21 what the nature of the evidence is. I just can't rule
22 on it without knowing more about the case, and I'll know
23 more as it goes on.

24 MR. MOIR: I'm just looking to be sure that
25 before any of this evidence is introduced, that we in

1 fact have the opportunity to approach the bench about
2 this.

3 THE COURT: Yeah, I don't see it -- again,
4 having a glass of wine with somebody is not a bad act,
5 so it's not prejudicial, it's not -- if you're an adult,
6 it's not 404(b) evidence. Using drugs, illegal drugs is
7 a bad act, and so I, you know, all I can say is it
8 depends. Don't mention in the opening statement, it
9 doesn't seem to be essential to you to tell the tale in
10 the opening and we will take it up as it goes along.

11 MR. MOIR: Very good.

12 THE COURT: Anything else?

13 MR. MOIR: Not on that issue.

14 THE COURT: All right. You have another issue
15 you'd like to take up?

16 MR. MOIR: Well, there's the second part of
17 404(b), your Honor, where we're dealing with other
18 sexual behavior by the defendant and the alleged victim
19 in this matter. The state -- the government, excuse me,
20 has indicated, starts right off indicating that they
21 would offer three or four witnesses to talk about
22 certainly the defendant engaged in sexual behavior with
23 them. This is not the people who are in --

24 THE COURT: Defendant engaging in sexual
25 behavior with the men who the government alleges later

1 had sex with the victim?

2 MR. MOIR: No, these are different men
3 entirely, unrelated to the images that are at issue.

4 THE COURT: Are you intending to get into any
5 of that?

6 MR. KAVACAS: Your Honor, they are not
7 unrelated, and here's the reason why. I would like to
8 introduce evidence that the defendant did in deed have
9 sex first with one witness named Brandon Ore. The
10 witness, Brandon Ore, subsequently began a sexual
11 relationship with the defendant's daughter and the
12 defendant filmed them having sexual intercourse in her
13 home. In order to provide context for this story, I
14 would like to introduce evidence that she put out a
15 personal ad, met this young man through that personal
16 ad. The young man came to her home. She was alone at
17 the time. They had sex. She told him next time you
18 come here, bring a friend. He did that. And when she
19 -- when he arrived at the defendant's home, she
20 introduced her daughter as her roommate. The four
21 paired up. He had sex with the daughter, she had sex
22 with the friend. This happened with four or five
23 different young men over the next couple of weeks.
24 Eventually --

25 THE COURT: All right, so, and again, you have

1 to understand --

2 MR. KAVACAS: Yes.

3 THE COURT: -- I know what's in the indictment
4 and what very limited facts you told me about at the
5 last conference, so let me speak back to you what I
6 understand you to be saying.

7 That one of the charged incidents here
8 involves the production of a video film of the victim
9 having sex with this person Brandon --

10 MR. KACAVAS: Ore.

11 THE COURT: Ore. And that you need to tell
12 the story of how that came to be. And the story of how
13 that came to be is that the defendant first came in
14 contact with Brandon Ore because she placed an ad
15 seeking a sexual partner, some kind of relationship or
16 something. Brandon Ore responded to the ad. She had
17 sex with Brandon Ore and told him the next time you come
18 back, come with a friend. Did it go further about
19 having sex with my roommate?

20 MR. KAVACAS: Not at that time. She just said
21 bring a friend. When he showed up at the house, he was
22 surprised to find the defendant -- no, I'm sorry, I take
23 that back. He was not surprised to find the defendant
24 alone, but when he did show up at the house, she said my
25 roommate is out for the night, it's just us. And then

1 when he left, she said bring a friend next time. And
2 that next time --

3 THE COURT: Did the advertisement involve two
4 people?

5 MR. KAVACAS: It said something to the effect
6 of two girls, 18 and 33, looking to party.

7 THE COURT: Oh, okay. So the first time
8 Ore -- you understand the testimony is Ore came
9 expecting there would be two women, and she said my
10 roommate's out.

11 MR. KAVACAS: He responded to the ad expecting
12 there would be two women. But in the e-mail exchange
13 prior to his going to the defendant's home --

14 THE COURT: My roommate is going to be out.

15 MR. KAVACAS: Right.

16 THE COURT: Okay. And then the testimony
17 would be next time, she said to him next time, bring a
18 friend, with the implication being my roommate will be
19 back.

20 MR. KAVACAS: Right.

21 THE COURT: Okay. And when he did come back
22 again, is that when one of the images was allegedly
23 produced?

24 MR. KAVACAS: No. The image was not produced
25 for at least a couple, maybe three weeks later. But

1 when he came back with that friend, that began a
2 pattern, a narrative that sort of provides texture for
3 this sexual relationship between Brandon Ore and the
4 daughter, and the ability of the defendant to video
5 record that sexual relationship at some point.

6 THE COURT: All right, and you want to tell
7 that story in the opening statement because it's part of
8 the narrative of how this crime came to occur.

9 MR. KAVACAS: Your Honor has it right.

10 THE COURT: Okay. You object on the grounds
11 that that is not sufficiently tied to the charged
12 offenses here and it's unfairly prejudicial, qualifies
13 as another bad act.

14 MR. MOIR: And indeed I don't find how that
15 provides the narrative, your Honor. The government is
16 arguing that this provides a context narrative. My
17 understanding from the discovery I've received, I don't
18 disagree with much of what Mr. Kacavas says, but Mr. Ore
19 comes over that first time, he engages in sexual
20 relations with the defendant allegedly, and then he
21 comes the next time with a friend. Mr. Ore then has
22 sexual relations with the daughter, that's my
23 understanding, and they have sexual relations. I don't
24 see how that furthers, I don't see how that's context.
25 And then he comes back with other friends a number of

1 times. Apparently they want to introduce the fact that
2 she had three or four different men came there while
3 Brandon Ore is with basically his girlfriend.

4 THE COURT: Well, again, it's hard for me to
5 make any definitive rulings about it until I know the
6 full contour of the evidence. But if you go only as far
7 as you've described to me now in your opening statement,
8 I agree with you that that is exactly the kind of
9 evidence that qualifies as context evidence. It's not
10 404(b) evidence in the traditional sense. And to the
11 extent it were to be characterized as 404(b) evidence,
12 it would be evidence of a pattern of behavior. But it's
13 really being offered not for pattern. It's really being
14 offered for context to say how did this crime come
15 about. And introducing that evidence seems to me to be
16 vital to the government's ability to tell the story in
17 any kind of way other than a completely truncated and
18 artificial way that would seriously damage the
19 government's ability to put on its case.

20 On the other hand -- so, my instinct is to say
21 at least to the extent we've had this limited proffer by
22 the government, that that too is not 404(b) evidence,
23 it's context evidence that is not subject to Rule
24 404(b). If it were subject to Rule 404(b) it would be
25 admissible anyway in the nature of the pattern, common

1 scheme or plan type evidence. But it really better fits
2 not as 404(b) evidence but as context evidence.

3 In any event, if it were 404(b) evidence I
4 think it would be admissible under Rule 404(b), and
5 again, under Rule 403, I think the balancing of
6 probative value and prejudicial effect is that it's not
7 unfairly prejudicial because it's all relevant for
8 purposes other than propensity. It's for purposes of
9 telling the story of how this happened.

10 So, I don't think that it is unfairly
11 prejudicial. Now, you said something about the
12 defendant having sex with other men other than Brandon
13 Ore.

14 MR. MOIR: This is what we're talking about,
15 is other men other than Brandon Ore.

16 THE COURT: Okay, wait, wait, wait, let me
17 just finish. I have to distinguish between the
18 defendant having sex with other men other than Brandon
19 Ore on occasions when Brandon Ore is responding to her
20 request to bring somebody, and he brings somebody. If
21 it's just seven months ago the defendant put an ad on
22 Craig's List and had sex with another man, that kind of
23 evidence is not context. It's admissible if at all if
24 it's some under 404(b) evidence, and it's quite distinct
25 from what I'm talking about. So, I would have to hear

1 more from the government before I could say that that
2 evidence is admissible. I need to have a better
3 understanding of the context.

4 To be clear, to the extent you want to
5 describe in your opening statement how the defendant
6 came into contact with Brandon Ore, that they had sex,
7 what the content of the ad was, to bring someone else
8 with you the next time, what happened when he did come
9 the next time and on those subsequent occasions leading
10 up to the charged event, that that evidence is context
11 evidence, not 404(b). I want to distinguish, however,
12 incidents of the defendant having sex with other men
13 that don't involve Brandon Ore.

14 MR. KAVACAS: I have no intention of
15 introducing that kind of evidence. The friends will be
16 connected to Brandon Ore. They will have gone to the
17 defendant's home with Brandon Ore to specifically have
18 sex with the defendant while Brandon Ore had sex with
19 her daughter under the same roof.

20 THE COURT: Well, I've tried to give you the
21 guidance that I can and it will be up to you to insure
22 that you do not stray from the instructions that I've
23 given you in the opening statement. So, on balance my
24 advice to you is to be somewhat conservative about what
25 you say about these matters in the opening statement.

1 I've authorized specifically alcohol and drug use by the
2 victim at a time immediately preceding or during the
3 commission of one of the offenses charged. I've
4 authorized evidence of sexual interaction between the
5 defendant and Brandon Ore and the defendant and Brandon
6 Ore and/or others that Brandon Ore brought with him, and
7 sexual contact between the defendant and Brandon Ore and
8 other people Brandon Ore brought with him and the victim
9 leading up to the commission of the charged offense,
10 because that seems to me to be highly relevant context
11 evidence and indeed, I mean, you have to look at context
12 in a commonsensical way. The government has to tell a
13 story here. It has to convince the jury beyond a
14 reasonable doubt. And if I were to start slicing and
15 dicing up the evidence in a way that had the government
16 without explanation suddenly talk about how a man shows
17 up in a room and starts having sex with the, it would
18 severely undermine the government's ability to tell its
19 story, its case, to present its evidence, and I don't
20 believe that's what Rule 404(b) or Rule 403
21 contemplates. So, I think it's essential to telling the
22 story and I don't think it's unfairly prejudicial.

23 So, but beyond that I think you need to
24 exercise great care about what you do in your opening
25 statement. You're better off deferring references that

1 might otherwise fall within this category until the
2 evidence comes up, and indeed you know as an experienced
3 trial lawyer that laying every single fact out that the
4 jury is going to hear during the course of the trial is
5 not a productive strategy for a lawyer, so it's in your
6 interest to let the story develop in the jury's mind
7 anyway. So I don't think I'm unfairly constraining you.

8 So, again, my ruling, to be clear, is I am
9 denying what I've construed as your objection as a
10 motion in limine. I'm denying your motion to bar the
11 government from producing evidence or making reference
12 to evidence of sex between the defendant and Brandon Ore
13 and the defendant and/or victim and Brandon Ore and
14 other people that Brandon Ore brought with him during
15 the sexual encounters leading up to the charged event.
16 Okay?

17 MR. KAVACAS: I understand.

18 THE COURT: Beyond that I have not yet ruled.
19 I defer ruling on it. Same instruction about don't
20 raise it in your opening statement. Don't discuss it
21 without first getting my permission.

22 MR. KAVACAS: Yes, sir.

23 THE COURT: Anything else?

24 MR. MOIR: Two items. One is I would move to
25 sequester Special Agent Gibeley who's been present of

1 course during jury selection. He may be a witness in
2 this case.

3 THE COURT: Is he going to be a witness?

4 MS. FITZGIBBON: Your Honor, if he testifies,
5 if we call him in chief, it will only be if there's no
6 stipulation to the chain of custody of one piece of
7 evidence that Agent Gibeley delivered. We don't
8 anticipate calling him for any other --

9 THE COURT: Well, the rule allows you to have
10 a case agent with you at the trial anyway except -- I
11 mean I recognize I have the discretion to keep him out
12 if I think it would be unfair to the defendant. But if
13 you're telling me at most he's going to be a chain of
14 custody witness, I don't see how that's problematic for
15 the --

16 MS. FITZGIBBON: Correct, your Honor, we don't
17 anticipate any substantive testimony.

18 MR. MOIR: My concern is this, your Honor.
19 There's going to be a number of witnesses who are going
20 to be testifying. I think the government anticipates
21 they may be saying certain things. I'm sure the court
22 knows that people often deviate from what is
23 anticipated. It is Agent Gibeley who is the one who
24 interviewed all of these people and memorialized
25 whatever prior interviews there were. Many of them had

1 numerous interviews.

2 THE COURT: Can the government just give me
3 the rule that specifically allows a case agent to -- I
4 haven't used it in a long time, so I don't have it in my
5 mind.

6 MS. FITZGIBBON: Your Honor, Rule 615(c)
7 refers to a person whose presence a party shows to be
8 essential to presenting the party's claim or defense.
9 And it would be the government's position, again, I'm
10 sorry, your Honor --

11 THE COURT: I maybe then based case law, but I
12 believe there is case law that recognizes that a case
13 agent ordinarily who's helping the government prepare
14 the case shouldn't be subjected to a sequester order,
15 but maybe I am reading -- well, let me ask you this.
16 Will you make a proffer as to what function the agent is
17 going to play if he's allowed to stay in the courtroom?

18 MS. FITZGIBBON: Yes, your Honor. Agent
19 Gibeley is obviously extremely familiar with this case.
20 He has been the agent, the government's case agent since
21 the beginning of the case that we took. He has been a
22 member of the trial team as far as our strategy, our
23 planning. He is intimately a part of this trial team.
24 I do anticipate him being of assistance to the
25 government. And again, I don't anticipate him offering

1 any substantive testimony.

2 THE COURT: All right, I'm going to deny the
3 motion but instruct you that you may renew -- you may
4 move to exclude the witness from testifying if they end
5 up calling him for more than chain of custody purposes
6 and you can demonstrate that it would have potential to
7 be unfair to the defendant if he's allowed to testify on
8 those subjects based on the argument that he somehow
9 gained some familiarity during the course of the trial
10 by sitting here that could allow him to shape his
11 testimony in ways that would be unfair to the defendant.
12 So --

13 MR. MOIR: That would be my concern, your
14 Honor, because, again, I have not had a chance to speak
15 to any of these witnesses. I do know they've given
16 numerous statements --

17 THE COURT: Given the government's proffer to
18 me, it's hypothetical at this point, and I think,
19 frankly unlikely, but, and I do think he's a need to be
20 -- the way the government works is they use the grand
21 jury to some extent, but for the most part they rely on
22 an agent who functions much like a paralegal during the
23 trial phase because he's the one that knows the case
24 better than anyone else, knows the statements, knows the
25 witnesses, and I think there's need to have a government

1 agent at trial and it's something that's routine in
2 courts across the country.

3 So, I understand your point but I'm going to
4 deny your motion to exclude the agent at this time
5 subject to your right, if they try to call the agent to
6 testify to anything more than chain of custody, you seek
7 to exclude the evidence on the basis that the government
8 gained some improper advantage by allowing him to be
9 present during the proceeding. I'm not implying the
10 ruling on that now, I'm just saying you can raise that
11 with me if it comes up, because I think it's
12 hypothetical and frankly is unlikely to come up.

13 I want to go back to the other issue of this
14 context evidence. I don't think it makes sense to say
15 it during the opening statement, but I will offer to
16 you, if you choose, and I'll leave it to you to decide
17 whether you want one, I'm happy to give a limiting
18 instruction when the evidence is offered to focus the
19 jury's attention and to tell them expressly this
20 evidence is not evidence of charged misconduct, it is
21 evidence that's being admitted solely for the purpose of
22 allowing the jury to hear the full context in which the
23 government's evidence is presented, and that it may not
24 be -- the jury may not hold these acts against the
25 defendant in determining whether they are guilty or

1 innocent; instead, they may consider the evidence to the
2 extent it's relevant in understanding the context in
3 which the evidence of the charged acts occurred. I'll
4 leave it to you, but I'm just telling you, I'm willing
5 to give a very strong limiting instruction about any of
6 the evidence that we've been talking about that's
7 subject of the Government's 404(b) notice, whether it's
8 404(b) evidence or not. So, evidence that the
9 defendant had the victim have sex with this person on a
10 different date in New Hampshire, not charged event, I'm
11 happy to say, you know, you hear evidence about that,
12 that's not one of the charged offenses and you can't
13 find the defendant guilty based on that. You're being
14 allowed to consider it for a limited purpose of context
15 in which you consider evidence that he committed -- one
16 of the charged offenses was committed. Do you see what
17 I'm saying?

18 MR. MOIR: I understand.

19 THE COURT: You want a limiting instruction,
20 you ask for it, I'll give it. You don't ask for it,
21 I'll assume you made a tactical judgment that you'd
22 rather not have one. That's a legitimate tactical
23 judgment a lawyer might make and I would defer to your
24 judgment on that. But I'm more than willing to offer a
25 very strong limiting instruction about the nature of the

1 evidence.

2 MR. MOIR: All right, very good.

3 THE COURT: Anything else?

4 MR. MOIR: One last thing. You wanted a
5 reminder, your Honor, regarding the jury selection
6 yesterday and our loss of one of the jurors.

7 THE COURT: Okay, thank you. I'll raise that
8 first off. One last thing, is the government intending
9 to submit a proposed jury instruction?

10 MS. FITZGIBBON: Yes, your Honor, we hope to
11 do that later today.

12 THE COURT: All right, but the sooner the
13 better because I'll be working on them here because this
14 is going to be a two-day trial, right, we will probably
15 have closing argument tomorrow. So I've got to be ready
16 to talk to you about charges, you know, it would be good
17 if I can do it tonight and maybe tomorrow. Now, I'm
18 working on a charge, but I usually depend on the
19 government because it's my belief that any good
20 prosecutor is going to begin their preparation of the
21 case with the indictment and the charges and carefully
22 go over the elements and carefully tailor how am I going
23 to satisfy this element. So, if there's anyone who's in
24 a position to have fully understood the elements of
25 these offenses, it's the government in the first

1 instance. So you're in the best instance to give me
2 instructions. I have instructions from the defendant
3 and I'm considering those instructions. I've tried
4 hundreds of cases, but I've only tried one or two of
5 these kinds of cases and I have proposed charges, but I
6 want to be sure I give you good advice on what I'm going
7 to instruct. So the sooner you can get those in to me
8 the better. It's ordinarily advisable for the
9 government to have those in before the start of the
10 trial, especially in a short trial so that I can be
11 working on it.

12 MS. FITZGIBBON: Yes, judge. We will try for
13 the lunch break today.

14 THE COURT: Okay, that would be good. All
15 right, so, are we ready to begin?

16 MR. KAVACAS: Yes, your Honor.

17 MR. MOIR: Yes, your Honor.

18 THE COURT: Okay, why don't we bring in the
19 jury.

20 BEFORE THE JURY

21 THE CLERK: Please remain standing and raise
22 your right hand.

23 (Jury duly sworn.)

24 THE CLERK: Thank you. You may be seated.

25 THE COURT: Good morning, members of the jury.

1 Let me give you some general instructions that you can
2 follow during the course of this trial and then we will
3 begin with the evidence.

4 So, I gave you some general instructions
5 yesterday. I want to reiterate those because it's very
6 important.

7 You need to keep an open mind about this case.
8 You're going to hear evidence sequentially, and the
9 evidence is going to start with evidence from government
10 witnesses. You can't really make up your mind about
11 guilt or innocence until you've heard all the evidence
12 in the case. And you can't even make up your mind until
13 you know the law because I'm not going to give you
14 detailed instructions on the law until after the
15 evidence has concluded. And even then, you need to be
16 keeping an open mind and be willing to listen to what
17 other jurors have to say about the case. So, you can't
18 really begin to, you can't make up your mind here until
19 you've heard everything. So, keep an open mind
20 throughout the trial.

21 I have instructed you not to expose yourself
22 to any discussions about the case in the media and to
23 report any information that you inadvertently are
24 exposed to.

25 I've instructed you not to go out and do any

1 investigation of this case yourself. That's because we
2 have to base decisions here solely on what happens here
3 in the courtroom. You see I have a court reporter
4 taking down every word that is being said during this
5 trial, and every piece of evidence that's admitted will
6 be kept as a record. So every -- and my instructions
7 will be recorded, so every single thing you, every input
8 you have to making your decision will be recorded. To
9 the extent you're out there gathering evidence on your
10 own, we have no record of that. We don't know whether
11 it's good evidence or bad evidence; whether you've done
12 something proper or improper. You have to base your
13 verdict solely on what happens here in court. So, don't
14 go out and try to do any investigation in the matter or
15 of anything about how you do your jury service.

16 I instructed you not to talk to other family
17 members or friends about the case. I'm going to tell
18 you it's fine during breaks to talk to each other about
19 something funny happened in court or something
20 incidental, but I don't want you to go in and start
21 forming groups and start talking about what did you
22 think of such and such testimony, because everybody
23 needs to hear what you have to think, and I don't want
24 you to be starting to decide the case until you've heard
25 everything. So don't engage in any discussions with

1 other jurors about the case until you've heard
2 everything, any substantive discussions, okay? I mean,
3 you're human beings and you may want to talk about what
4 happened in court, but don't discuss the merits of the
5 case and start deliberating until you've heard
6 everything.

7 Don't do any social media involving the case
8 while the case is ongoing. So, no Facebooking, no
9 Twitter, no any social media of any sort.

10 You will have notebooks in front of you. I
11 want to give you some instructions about using notes,
12 okay? First of all, no one has to take a single note.
13 And if you're not comfortable taking notes, don't take
14 notes. No one will think less of you. Because your
15 principal job is really to watch what's happening, to
16 listen carefully, and that can be distracting for people
17 who are taking notes. They get lost in the note taking
18 and they aren't looking up and watching the witness
19 while the witness is testifying. So, you need to be
20 paying careful attention, so don't let note taking
21 interfere with that primary function of yours. But if
22 it helps you to take notes, as it does some people,
23 you're free to do that. You should understand, no one
24 will see your notes but you. We will collect them each
25 day at the end of the day, put them in an envelope. At

1 the end of the case they will be destroyed. No one will
2 ever see those notes, the contents of the notes. And
3 I'm instructing you, you're not to show your notes to
4 other members of the jury or to read from your notes to
5 other members of the jury in an effort to try to
6 persuade them about what happened. You can use your
7 memory and your refreshed memory, but I don't want you
8 telling other jurors, well, I wrote down he said this,
9 so that must be the case. So, use your notes to the
10 extent they help you and don't let note taking distract
11 you from your primary mission, okay?

12 So, a word or two about how the trial is going
13 to unfold. This will be a fairly short trial. We have
14 very experienced lawyers on both sides of the case who
15 know how to do their jobs, and I expect the trial will
16 run efficiently and quickly. We will probably complete
17 the case tomorrow. I doubt we'll have time for closing
18 argument and instructions today, so we will probably
19 complete the trial at some point tomorrow.

20 We're going to begin with opening statements.
21 The government has the burden of proof here, as I
22 mentioned to you, beyond a reasonable doubt. So the
23 government will go first and give you a presentation of
24 what it expects the evidence in the case will show.
25 That will be followed by an opening statement from the

1 defendant if the defendant chooses to make an opening
2 statement.

3 What the lawyers say in their opening
4 statements and during the course of the entire trial is
5 not evidence. An opening statement is kind of a preview
6 of coming attractions. It's a statement of what they
7 expect the evidence to show, but it's not evidence. So,
8 if they say something in the opening and there's no
9 evidence of it at the trial, you can't consider that,
10 because it's what the witnesses say, what the evidence
11 shows, and what the reasonable inferences you use
12 drawing from that evidence, using your common sense,
13 called circumstantial evidence, that constitutes the
14 evidence in the case, not what the lawyers say. Okay?

15 So, they're going to object during the course
16 of the trial. That's what lawyers do. Don't hold that
17 against them. That's for me, though. So don't be
18 swayed one way or another about what happens with the
19 objection. If I give you an instruction or ruling -- so
20 I may say objection overruled. If I say overruled, that
21 means that the objection has no merit and the witness is
22 going to be allowed to answer. If I say objection
23 sustained, then the witness is not going to be allowed
24 to answer. Sometimes the witness will answer before I
25 can rule on the objection, and I may grant a motion to

1 strike. If I say motion granted, the evidence is
2 stricken, you have to disregard that evidence. Okay?

3 And I may tell you during the course of the
4 trial that evidence can be admitted only for a limited
5 purpose. Sometimes I allow you to consider evidence for
6 this purpose, but not for that purpose. And when I do
7 that, you have to follow that instruction. And I may
8 give you instructions like that during the course of the
9 trial.

10 So, after the opening statements the
11 government will begin calling witnesses. And the way I
12 work in my court is the government will offer -- ask
13 direct -- will put on its direct evidence. It will
14 offer, ask a series of non-leading questions to the
15 witness. And when the direct evidence is completed, I
16 allow cross-examination by the defendant if the
17 defendant chooses to cross-examine. Of course remember,
18 a defendant in a criminal trial has no burden to produce
19 any evidence, to ask any question. The burden of proof
20 is always on the government. The government has to
21 prove guilt beyond a reasonable doubt. So the defendant
22 doesn't have to ask any questions and you can't hold it
23 against the defendant if the defendant chooses not to
24 ask any questions, but they're free to cross-examine if
25 they want to.

1 After that I will allow brief redirect by the
2 government and that usually concludes it. I don't
3 usually allow recross or re-redirect except in unusual
4 circumstances.

5 So, the government will put on its witnesses
6 sequentially and then when it rests its case the
7 defendant will have an opportunity to put on evidence.
8 The defendant has no obligation to put on evidence. The
9 defendant has a constitutional right to remain silent.
10 The defendant need not testify. If she chooses not to
11 testify, you can't hold that against her in any way or
12 discuss it in your deliberations. But if they choose to
13 put on evidence, the defense can put on evidence at that
14 point, and it will work the same way, with direct by the
15 defendant, cross by the government, redirect by the
16 defendant.

17 And after we've heard the government's
18 evidence and the defendant's evidence, ordinarily the
19 evidence in the case will be concluded and at that point
20 you will have heard testimony, you may have
21 stipulations, sometimes parties agree on a certain fact,
22 I'll announce it as a stipulation and tell you you can
23 consider that fact as if it had been admitted here in
24 court. So, we will have testimonial evidence, we may
25 have stipulations, there will be physical evidence,

1 exhibits that are moved into evidence, and there is
2 again, circumstantial evidence, evidence that you can --
3 which consists of the inferences that you draw using
4 your common sense and every day experience from the
5 direct evidence in the case.

6 And that's the evidence on which you would
7 have to base your decision. You have to base your
8 decision on that evidence. Nothing else. Nothing that
9 happens outside the courtroom, nothing that isn't
10 evidence.

11 The government will then be given an
12 opportunity to give a closing argument. The defense
13 will have an opportunity to give a closing argument.
14 And the government will have an opportunity to give a
15 brief rebuttal to the defense closing argument. And
16 then I'll instruct you on the law and then you will be
17 allowed to begin your deliberations.

18 When you begin your deliberations, I'll give
19 you a written copy of my jury instructions that you can
20 have with you in the deliberation room. I'll give you a
21 copy of the verdict form. You'll have copies of the
22 exhibits with you. And at that point you are free to
23 begin your deliberations towards reaching a verdict in
24 the case.

25 So, those are my general instructions. Please

1 keep them in mind throughout the trial. Unless counsel
2 needs to see me with respect to anything else, we're
3 ready to begin with opening statements. Please proceed,
4 counsel.

5 MR. KAVACAS: Thank you, your Honor.

6 We did some wrong stuff. We weren't the best
7 behaved people. I should have been the mom, not the
8 friend. That's what the defendant told her 14-year-old
9 daughter in a recorded telephone call following her
10 arrest.

11 But the defendant was neither mom nor friend
12 to her young daughter. She was instead her pot pusher,
13 her pornography producer and her predator. She sexually
14 exploited her own child. She encouraged young men to
15 have sex with her and she captured it on video. And in
16 the process, the defendant's daughter became an object,
17 a thing the defendant used to create, produce and
18 possess child pornography.

19 Good morning, ladies and gentlemen. Let me
20 remind you, my name is John Kacavas. I'm the United
21 States Attorney for the District of New Hampshire. My
22 trial partner is Assistant United States Attorney Helen
23 Fitzgibbon, and together we represent the United States
24 in this case. Seated with us at counsel table is the
25 lead investigator in the case, Special Agent Mike

1 Gibeley of the FBI. And you recall that that's Dena
2 Blanco, and Dena is a paralegal in our office and she
3 will be assisting us during this trial.

4 Now, folks, the video evidence that you're
5 going to see and hear during this trial is graphic.
6 It's difficult to watch. It's difficult to listen to.
7 But we have to show it to you because this graphic video
8 evidence was created and produced by the defendant
9 herself, and it's proof beyond any reasonable doubt that
10 the defendant is guilty of the eight crimes with which
11 she's charged.

12 And you'll also hear audio evidence created by
13 the defendant herself. In her own words, shifting blame
14 for these crimes to her 14-year-old daughter. A young
15 girl whose role model in life was the defendant. And
16 the defendant should have been the mom. She should have
17 been the mom when her daughter, and we're going to be
18 referring to her daughter as R.B. in order to protect
19 her privacy during the course of this trial because of
20 her age, the defendant should have been the mom when
21 R.B. met a young man named Kevin Watson in an Internet
22 chat room in early 2012. At the time, Kevin Watson was
23 19 years old, and he lived just outside of Niagara
24 Falls, Ontario, Canada. And R.B., she was 13 years old
25 at the time, and she lived with the defendant in

1 Manchester.

2 And after R.B. met Kevin Watson on line, the
3 defendant met Kevin Watson on line. And the three of
4 them began to engage in sexual activity over the
5 Internet. And after about a month or two of this long
6 distance relationship, the defendant arranged to meet
7 Kevin Watson in person in Niagara Falls, Ontario, over
8 the Memorial Day weekend in May of 2012.

9 So on Friday, May 25th, the defendant and R.B.
10 flew to Buffalo. The defendant rented a car and drove
11 to Canada to spend the weekend with Kevin Watson. Now,
12 the defendant didn't drag R.B. across the border kicking
13 and screaming. No. R.B. wanted to go to Canada. She
14 wanted to meet Kevin Watson. And she wanted to have sex
15 with him. But R.B. was 14 years old, having barely
16 celebrated her birthday three weeks earlier. The
17 defendant, on the other hand, was 42 years old, and she
18 should have been the mom. And she had her own reasons
19 for traveling to Canada. You see, she also wanted to
20 meet Kevin Watson. She also wanted to have sex with
21 Kevin Watson in person. And she wanted to video record
22 her daughter having sex with him as well. And we will
23 prove to you beyond a reasonable doubt that the
24 defendant took her daughter to Canada for that very
25 purpose as alleged in Count One of the indictment. We

1 will prove it to you using the graphic video evidence
2 created and produced by the defendant herself. And we
3 will prove it to you using the audio evidence created by
4 the defendant herself. In her own words she told more
5 than one person that she took R.B. to Canada so she
6 could video record her daughter's first sexual
7 experience with a young man.

8 So, after renting a car in Buffalo the
9 defendant drove to Kevin Watson's home, picked him up
10 and then drove to a hotel, the Peninsula Inn, in Niagara
11 Falls, Ontario. They checked in and dropped their bags
12 and then they left briefly so the defendant could buy
13 some alcohol, some juice and some cigarettes.

14 They returned to the hotel where they started
15 drinking and smoking marijuana. Marijuana that Kevin
16 Watson brought with him at the defendant's request. And
17 R.B., the only child in that hotel room, drank alcohol,
18 smoked marijuana, and the defendant did nothing to stop
19 it.

20 She should have been the mom. Instead, she
21 took out her video recorder, and after having a little
22 trouble with the lens cap on that video recorder, she
23 records Kevin Watson and R.B. on the bed in their
24 clothes. And as if you needed a reminder that R.B. was
25 a child at that time, you'll see that on the bed next to

1 her, she has a stuffed animal. A green stuffed turtle.

2 The defendant then trains her video recorder
3 on the small table in front of the bed to show the
4 drinks, the weed, and the hot tub, to use her own words,
5 and then she marvels at the size of their hotel room as
6 she pans across it. And within minutes, at the
7 defendant's suggestion, Kevin Watson is having sexual
8 intercourse on the bed with R.B., and the defendant is
9 video recording.

10 In this video, which forms the basis for the
11 charge in Count Two of the indictment, R.B. and Kevin
12 Watson are naked from the waist down. Kevin Watson is
13 on top of R.B. on the bed. You will see that Kevin
14 Watson is wearing a red shirt and blue hospital booties
15 on his feet. And he'll tell you that he was wearing
16 these blue hospital booties because he burned his feet
17 walking across a fire not long before this video was
18 taken.

19 And the defendant is video recording this sex
20 act with her video recorder, zooming in and shooting
21 this from different angles. And in the background you
22 can hear some noise, this music from a group called
23 Machine Gun Kelly, and the defendant chose to play this
24 particular music because it was R.B.'s favorite, and the
25 defendant wanted to commemorate this occasion of her

1 first sexual experience with a young man.

2 She should have been the mom. Instead she was
3 her daughter's pornography producer.

4 And after she finished video recording R.B.
5 and Kevin Watson having sex, she had sex with Kevin
6 Watson while her child was in the room. And that's how
7 they spent much of this weekend. Drinking, smoking
8 marijuana and having sex.

9 Count Three of the indictment is based on
10 another video of Kevin Watson and R.B. having sexual
11 intercourse, and this video was taken by the defendant
12 the following day, Saturday. And in this video you see
13 R.B. naked from the waist down and she's on top of Kevin
14 Watson who is lying on his back completely naked. And
15 while the defendant is video recording this sex act, she
16 tells her daughter, you'll hear her tell her daughter,
17 it takes practice, baby, it's not so easy. That was the
18 defendant's maternal advice to her 14-year-old daughter.
19 It takes practice, baby.

20 She should have been the mom. Instead she was
21 her daughter's sex coach.

22 Count Four of the indictment is based on yet
23 another video of Kevin Watson and R.B. having sexual
24 intercourse in that hotel room. This one was also taken
25 that Saturday. And in this video you'll see that R.B.

1 is on the bed naked from the waist down, on her hands
2 and knees, and Kevin Watson is behind her. And
3 something occurs during the filming of that video that
4 causes the defendant to laugh out loud at her daughter's
5 expense. And I don't need to say anything more about
6 that. You'll see it for yourself on the video.

7 Count Five is based on a digital image, a
8 photograph of the defendant, R.B., and Kevin Watson,
9 lying on the bed in their hotel room. This photograph
10 was taken from the foot of the bed using the camera's
11 automatic timer. It was taken on Monday morning before
12 they checked out of their hotel. And the photograph
13 shows Kevin Watson lying down, exposing his penis,
14 sandwiched between the defendant on the left and R.B. on
15 the right, both of whom are clothed and both of whom are
16 smiling.

17 Now, folks, you're going to see that R.B.
18 appears to be a willing participant in this sexual
19 activity depicted in each of these videos and in that
20 photograph. She doesn't appear to have been forced to
21 submit to this sexual activity. She doesn't appear to
22 put up any resistance. But remember, she was barely
23 14 years old. Just a young girl whose role model was
24 the defendant.

25 And the defendant should have been the mom.

1 So, after their Memorial Day weekend with
2 Kevin Watson, the defendant and R.B. return home to
3 Manchester. And again, the defendant should have been
4 the mom, but instead she became R.B.'s roommate. That's
5 how she introduced her daughter when she met Brandon
6 Ore, an 18-year-old recent high school graduate.

7 The defendant met Brandon through a personal
8 ad she had posted in the casual encounter section of
9 Craig's List, an Internet networking site. Brandon Ore
10 saw the ad, responded to it. The ad said something to
11 the effect of two girls, 18 and 33, looking to party.

12 So, Brandon responded and made arrangements to
13 meet the defendant. The first time he went to her
14 house, she was alone. She told him her roommate was out
15 for the night. And that night Brandon Ore and the
16 defendant engaged in sexual intercourse. And when he
17 left the next morning, she told him, next time you come
18 by, bring a friend. And as instructed, that's what
19 Brandon Ore did. He returned to the defendant's home
20 with a friend. And when they arrived, the defendant's
21 daughter was home. And she introduced her 14-year-old
22 daughter as her 18-year-old roommate. And in order to
23 further this deception, the defendant and her daughter
24 refer to themselves by their first names only. And
25 later that evening Brandon Ore and R.B. left, went to

1 her bedroom and had sexual intercourse, while the
2 defendant took Brandon's friend to her bed.

3 And this repeated a -- this started a pattern
4 that repeated over the next couple of weeks. Brandon
5 would bring a friend, the four of them would get
6 together, Brandon would pair up with R.B., while the
7 defendant would pair up with Brandon's friend, all under
8 the same roof. And after two or three weeks, Brandon
9 moved into the defendant's home. And after he did so,
10 he started to see and hear things that made him question
11 his 18 and 33-year-old roommates. They started to refer
12 to themselves differently. The defendant started to
13 refer to R.B. as baby, and R.B. referred to the
14 defendant as mom. So when Brandon confronted them, they
15 admitted the true nature of their mother/daughter
16 relationship, and eventually the defendant admitted that
17 she was turning 43 years old and that R.B. was only 14.

18 That didn't matter much to Brandon Ore who by
19 then considered R.B. his girlfriend, and it certainly
20 didn't change anything for the defendant.

21 Brandon Ore continued to have sex with R.B.
22 and the defendant continued to permit it. In fact she
23 encouraged it. She even suggested that they have sex in
24 the living room in front of her. So one day while the
25 three of them were sitting on the couches in the living

1 room, the defendant suggested that Brandon and R.B. have
2 sex. They took her suggestion. And as they engaged in
3 sexual intercourse on the couch, the defendant stood
4 behind them and video recorded it with her iPhone as
5 alleged in Count Six of the indictment.

6 And in this video Brandon Ore is completely
7 naked and he's on top of R.B., and you can clearly see a
8 silver purity ring on R.B.'s left-hand, and this purity
9 ring is supposed to signify virginity.

10 And in this video you can hear Brandon over
11 some loud music of the television refer to the defendant
12 as mom. And he turns around and he sees what she's
13 doing and he asks her, are you still recording? Are you
14 still taking a video? I thought video time was over.
15 And a few seconds later, the defendant's daughter asks
16 the same thing. Are you still taking a video? And the
17 defendant responds to her daughter's question with no.
18 And then you can hear her laughing as she says, well,
19 maybe.

20 The defendant should have been the mom.

21 Now, the defendant not only used Brandon and
22 R.B. to produce child pornography, she also showed
23 Brandon the child pornography she produced in Canada.
24 She told Brandon all about Kevin Watson and about her
25 video recordings of her daughter's sexual encounters

1 with him. And, one day, sitting in the living room in
2 the presence of her daughter asking her mother not to
3 show this video, the defendant used her laptop and
4 showed Brandon the video of R.B. on a bed in a Canadian
5 hotel room on her hands and knees having sexual
6 intercourse with Kevin Watson.

7 After about two months of living in the
8 defendant's home, Brandon Ore moved out and he turned
9 himself in to the Manchester police. He reported what
10 he had been doing with the defendant -- I'm sorry, he
11 reported what he had been doing with R.B., a 14-year-old
12 girl, and he reported what he had seen at the
13 defendant's house over those two months, including that
14 Canada video. And after authorities started
15 investigating, the defendant tried to get Brandon Ore to
16 change his statement to the police, even driving him to
17 the Manchester Police Department to make sure he did.
18 But Brandon didn't change his statement. In fact, he
19 reported that the defendant tried to get him to lie to
20 the police.

21 Shortly after that the defendant was arrested
22 and her laptop computer was seized and searched. And
23 the search of that computer revealed that it contained
24 child pornography, including the Canada videos and the
25 video of Brandon and R.B. But that wasn't the only

1 video -- the only child pornography that that computer
2 contained, and we will prove to you beyond a reasonable
3 doubt that the defendant knowingly possessed that child
4 pornography on her laptop computer as alleged in Count
5 Eight of the indictment.

6 But that laptop computer contained one other
7 video. The video in which the defendant recorded
8 herself performing oral sex on her own child. And in
9 this video R.B. is seated on the couch in the living
10 room. She's holding her underwear aside to expose her
11 genitalia. And you can clearly see that silver purity
12 ring on her left-hand. And you can see the defendant
13 digitally penetrating her daughter. After several
14 minutes of that, the defendant changes position and she
15 performs oral sex on her child.

16 The defendant should have been the mom.
17 Instead, she was her daughter's predator.

18 Again, R.B. appears to be a willing
19 participant in the sexual activity depicted in that
20 video. She doesn't appear to have been forced and she
21 doesn't appear to put up any resistance. And as you see
22 these videos, please bear in mind that she was just
23 barely 14 years old. It's what she knew. It's what she
24 knew because this young girl's role model was the
25 defendant, and the defendant should have been the mom.

1 Now, we will prove to you beyond a reasonable
2 doubt that the defendant knowingly used R.B. to engage
3 in sexually explicit conduct for the purpose of creating
4 all these videos and for the purpose of creating that
5 photograph as we alleged in Counts Two through Seven of
6 the indictment. And we will prove to you beyond a
7 reasonable doubt that these images traveled in
8 interstate commerce, either because the defendant took
9 them from Canada where she made them, back here to New
10 Hampshire, or because the defendant used materials that
11 were manufactured outside of New Hampshire and had
12 traveled in interstate commerce, like her iPhone and her
13 laptop.

14 Ladies and gentlemen, the graphic video
15 evidence in this case, evidence created and produced by
16 the defendant herself, speaks for itself. And the audio
17 evidence created by the defendant also speaks for
18 itself. It's the defendant in her own words blaming her
19 14-year-old daughter for this. Saying this is somehow
20 her fault.

21 So at the end of this case, after you've
22 watched these videos, after you've heard the testimony,
23 after you've listened to the defendant's own words,
24 we're going to ask you to set her straight. We're going
25 to ask that you find her guilty on these eight charges,

1 and by your verdicts, tell the defendant that this isn't
2 her daughter's fault. Tell her that she should have
3 been the mom. Thank you, your Honor.

4 THE COURT: Thank you. Defendant want to make
5 an opening statement?

6 MR. MOIR: Yes, your Honor, thank you.

7 THE COURT: Go ahead.

8 MR. MOIR: Good morning, ladies and gentlemen.
9 I always find jury selection interesting. Yesterday
10 when we were here, we had the entire panel here, you
11 were asked to do something a bit of odd. The judge
12 asked you a number of questions about whether you could
13 be fair. Basically asked you if you can be fair about a
14 case you knew nothing about. I think yesterday you knew
15 this involved child pornography. Now, after hearing Mr.
16 Kacavas's opening statement, you know a lot more.

17 The judge asked you those questions for a
18 reason, though. And at the end of this case he is going
19 to instruct you in basically the exact same manner. He
20 is going to tell you that you have to keep your eye on
21 one thing and one thing only. Has the government proven
22 every element of each offense beyond a reasonable doubt.
23 That's what you're going to have to look at. That's
24 what the judge is going to instruct you to do. That is
25 going to be your sworn duty. Indeed, even the

1 government wants you to do that, because that's how the
2 system works. That's what the case is about.

3 There's a few things this case is not going to
4 be about. You're not going to be here to decide whether
5 Lisa Biron should have been a mother. A good mother, a
6 bad mother, whatever. These things, as Mr. Kacavas
7 said, are going to speak for themselves. I think you're
8 going to find them shocking. I think you're going to
9 find them reprehensible. You're going to find them
10 despicable. No question about it. I've known that
11 since day one. You know that now.

12 The issue here, though, is not going to be
13 whether Lisa Biron is immoral or depraved. The issue is
14 going to be, and I'm going to say it one more time,
15 whether the government proves every element of these
16 offenses beyond a reasonable doubt.

17 This is also not about what other things,
18 there could be charges in the state, other federal
19 charges in Canada, things that are not before you. It's
20 about these charges here. You see, it's the government
21 that decides which charges to bring. It's not up to the
22 judge. It's not up to me. It's the government. They
23 said here are the charges that we are bringing. By
24 bringing these charges they define what has to be proven
25 to you. They define.

1 So, I'm going to ask you to look at the
2 evidence, listen to the evidence, and then when you get
3 to the end of the case we both have opportunities to
4 speak to you again. We're going to go very, very
5 carefully through the elements of the offense, of each
6 offense. We're going to talk about whether the
7 government has met those elements. Whether they have
8 proven beyond a reasonable doubt.

9 I look forward to speaking to you again at the
10 end of the case. Thank you very much.

11 THE COURT: Thank you. Members of the jury,
12 counsel reminded me this morning and I believe I
13 neglected to mention it, I'll do so now. You will
14 recall yesterday there was an additional juror among you
15 and that juror is not here today and a new juror was
16 added. You should understand that that juror did
17 nothing wrong. It was just a simple matter that for
18 reasons that need not concern you we determined it was
19 appropriate for another juror to take his place. So,
20 don't infer anything from the fact that one of the
21 jurors was replaced at the beginning of the case.

22 All right, are you ready to call your first
23 witness?

24 MR. KAVACAS: We are, your Honor.

25 THE COURT: Please proceed.

1 MR. KAVACAS: The United States calls Kevin
2 Watson. I'll ask you to enter the witness box and to
3 remain standing to be sworn, please.

4 THE CLERK: Please raise your right hand.

5 KEVIN WATSON

6 having been duly sworn, testified as follows:

7 THE CLERK: Thank you. Would you please state
8 your name and spell your last name for the record.

9 THE WITNESS: Kevin Watson. K-E-V-I-N
10 W-A-T-S-O-N.

11 DIRECT EXAMINATION

12 BY MR. KAVACAS:

13 Q. Good morning, Kevin.

14 A. Good morning.

15 Q. I'm going to pour you a glass of water here,
16 cup of water, okay?

17 A. Thank you.

18 Q. Now, I'm going to be standing back there to
19 ask you some questions. And the reason I'm going to
20 stand back there is because I want you to keep your
21 voice up.

22 A. Okay.

23 Q. Because if I can hear you back here, then
24 these people can hear you too.

25 A. Okay.

1 Q. Kevin, how old are you?

2 A. I'm 20.

3 Q. Where do you live?

4 A. In Ontario, Saint Catherines.

5 Q. Canada?

6 A. Canada, yes.

7 Q. And is that near any place, famous tourist
8 attraction?

9 A. Niagara Falls on the Ontario side, the Canada
10 side.

11 Q. And who do you live in Saint Catherines with?

12 A. With my family. My mom, my mom's boyfriend
13 and my brother.

14 Q. Do you work?

15 A. Yes. Construction, greenhouses.

16 Q. Are you presently employed?

17 A. No, not right now.

18 Q. How long have you been doing construction?

19 A. For a couple years now.

20 Q. What kind of construction do you do?

21 A. Concrete, water-proofing basements, and
22 repairing foundations.

23 Q. Okay. Are you a high school graduate, Kevin?

24 A. Yes.

25 Q. When did you graduate from high school?

1 A. 2011.

2 Q. Now, do you know the defendant, Lisa Biron?

3 A. Yes, I do.

4 Q. When did you meet her?

5 A. In March 2012.

6 Q. Do you see her in the courtroom today?

7 A. Yes, I do.

8 Q. Would you point her out and describe what
9 she's wearing?

10 A. In the black suit to my left.

11 Q. And do you know the defendant's daughter?

12 A. Yes.

13 Q. Let me warn you that we're referring to the
14 defendant's daughter as R.B. during this trial; okay?

15 A. Yes.

16 Q. You understand that?

17 A. Yes.

18 Q. All right. When did you meet R.B.?

19 A. In March 2012.

20 Q. Okay. How did you meet her?

21 A. Through an Internet site called Omego.

22 Q. Who did you meet first, Kevin, the defendant
23 or the defendant's daughter?

24 A. The daughter, R.B.

25 Q. Okay. And you said that you met her on an

1 Internet website?

2 A. Yes.

3 Q. What kind of website was this?

4 A. It's two people literally chatting to webcams
5 and you can type at the same time.

6 Q. So you use webcams?

7 A. Yes.

8 Q. What are those?

9 A. It's a camera on your computer.

10 Q. So you can see the other person you're talking
11 to?

12 A. Yes.

13 Q. And when you met R.B. in March of 2012, how
14 old were you?

15 A. Nineteen.

16 Q. What did you guys chat about?

17 A. Personal stuff and where we live.

18 Q. What kinds of personal stuff would you chat
19 about?

20 A. (No response.)

21 Q. Did you talk about sex, Kevin?

22 A. Yes, yes, sex, and other personal stuff about
23 each other.

24 Q. Okay. What happened after you started --
25 well, how long was it after you met R.B. that you

1 started chatting about sex?

2 A. Once we added each other on Skype and talked
3 to each other.

4 Q. Okay. You said added each other on Skype.
5 What does that mean, what did you do?

6 A. It's another chat with two cameras and you can
7 type at the same time.

8 Q. So you can type and see the other person at
9 the same time?

10 A. Yes.

11 Q. And were you talking about sex when you were
12 doing that?

13 A. Yes.

14 Q. What else were you doing?

15 A. Masturbating and talking about personal stuff
16 and what's in each other's countries and just talk about
17 general stuff.

18 Q. Okay. I want to get back to the sexual
19 activity. You were masturbating while you were talking
20 to R.B., Skyping with R.B.?

21 A. Yes.

22 Q. For purpose of simplicity I'm going to call it
23 sex text.

24 A. Yes, okay.

25 Q. So you had sex text with R.B.?

1 A. Yes.

2 Q. Was she masturbating when she was talking to
3 you?

4 A. Yes.

5 Q. Okay. How long did you and R.B. have Skype
6 sex before you met the defendant?

7 A. A couple weeks after.

8 Q. You met the defendant a couple weeks after you
9 met R.B.?

10 A. Yes.

11 Q. Okay. What happened when you met the
12 defendant?

13 A. We started to Skype sex also.

14 Q. What did that entail, you were doing what?

15 A. Masturbating.

16 Q. What was the defendant doing?

17 A. Masturbating to Skype sex.

18 Q. Okay. Now, when you were having Skype sex
19 with R.B., was it just you and R.B.?

20 A. At first it was, yes.

21 Q. And then when you started having Skype sex
22 with the defendant, was it just you and the defendant?

23 A. Sometimes it was and sometimes it wasn't.

24 Q. Okay. When it wasn't, what was happening?

25 A. It would be me and R.B.

1 Q. All right, and did -- so it was you and R.B.
2 Skype sexting?

3 A. Yes.

4 Q. You and the defendant Skype sexting?

5 A. Yes.

6 Q. Was there ever any other arrangement in which
7 you all were Skype sexting?

8 A. (No response.)

9 Q. Did you ever Skype sex with the defendant and
10 R.B. in the same room?

11 MR. MOIR: Objection, your Honor. Leading,
12 your Honor.

13 THE COURT: Overruled.

14 A. Yes.

15 Q. Did you hear my question? I'm going to ask it
16 again. Listen, okay?

17 A. All right.

18 Q. Did you ever Skype sex with R.B. and the
19 defendant when they were in the same room using the same
20 webcam?

21 A. Oh, okay, yes.

22 Q. How often did that happen?

23 A. More than once in a day or -- yes.

24 Q. You say more than once a day?

25 A. Yes.

1 Q. How many days, how often?

2 A. Most of the time every time we chatted.

3 Q. And you chatted daily?

4 A. Yes.

5 Q. And eventually you met in person?

6 A. Yes.

7 Q. So how long did this Skype sexting go on
8 before you met in person?

9 A. For a while.

10 Q. What's a while?

11 A. About a month.

12 Q. Who arranged to meet in person?

13 A. Lisa did.

14 Q. And what was the -- what was the purpose of
15 that meeting? What was the plan?

16 A. To have sex with R.B. and Lisa.

17 Q. Where?

18 A. At a hotel in Niagara Falls, Ontario.

19 Q. Did the defendant tell you anything about
20 having sex with them in Niagara Falls?

21 A. Yes.

22 Q. What did she say?

23 A. That we could make a porno.

24 Q. And did she tell you that before she met you
25 when you were Skype sexting?

1 A. Yes.

2 Q. Now, did you know how old R.B. was when you
3 met her?

4 A. Can you say that again?

5 Q. Sure. When you met R.B., how old was she?

6 A. I was told that she was 16 turning 17.

7 Q. Who told you that?

8 A. R.B. did.

9 Q. Did you eventually find out her true age?

10 A. Yes, I did.

11 Q. When did you find that out?

12 A. A couple weeks after when I was already Skype
13 sexting R.B.

14 Q. How did you find out her true age?

15 A. Lisa told me.

16 Q. So you've testified that the defendant
17 arranged to meet in person?

18 A. Yes.

19 Q. What were those arrangements?

20 A. For us to have sex in the hotel.

21 Q. Okay. When was that meeting scheduled to take
22 place?

23 A. May 25th. The Memorial holiday.

24 Q. The Memorial holiday here in the states?

25 A. Yes.

1 Q. And where was this meeting supposed to take
2 place?

3 A. Can you ask that again?

4 Q. Sure. Where were you guys going to meet?

5 A. Um --

6 Q. What country were you going to meet in?

7 A. Oh, okay, in Canada, yeah.

8 Q. What province in Canada?

9 A. Ontario.

10 Q. What town in Canada?

11 A. Saint Catherines.

12 Q. Well, that's where you live; right?

13 A. Yes.

14 Q. Where were you going to meet?

15 A. Niagara Falls.

16 Q. Where in Niagara Falls?

17 A. Peninsula Inn.

18 Q. The Peninsula Inn?

19 A. Yes.

20 Q. Did the defendant tell you about how she and
21 R.B. were going to get to the Peninsula Inn in Niagara
22 Falls?

23 A. They said that they were going to fly and come
24 over with a rental car and pick me up.

25 Q. Did she say where they were going to fly to?

1 A. I recall to Buffalo.

2 Q. Okay. Did you make any arrangements for this
3 weekend?

4 A. No, I did not.

5 Q. Did you pay for any of the arrangements this
6 weekend --

7 A. No, I did not.

8 Q. Let me finish my question.

9 A. Sorry.

10 Q. Did you pay for any of the arrangements this
11 weekend?

12 A. No, I did not.

13 Q. Who paid for these arrangements?

14 A. Lisa did.

15 Q. All right. Let's go to Memorial Day weekend.

16 A. Okay.

17 Q. What happened?

18 A. I was picked up and we drove to the Peninsula
19 Inn.

20 Q. All right. Who picked you up?

21 A. Lisa did.

22 Q. Was anybody with her?

23 A. Yes, R.B.

24 Q. Where did they pick you up?

25 A. Out in front of my house.

1 Q. Do you remember what day of the weekend they
2 picked you up?

3 A. Friday.

4 Q. All right. Now, you've testified that you
5 live with your mother, her boyfriend, your brother?

6 A. Yes.

7 Q. What did you tell your mother you were doing
8 that weekend?

9 A. I was staying at a friend's house for the
10 weekend.

11 Q. So you lied to your mother?

12 A. Yes.

13 Q. Instead you were -- went to the Peninsula Inn
14 with the defendant and R.B.?

15 A. Yes.

16 Q. How far is Niagara Falls from Saint
17 Catharines?

18 A. About 20 minutes.

19 Q. And when they picked you up at your house,
20 what did you leave your house with?

21 A. A couple bags of clothes.

22 Q. What else?

23 A. And I did bring marijuana.

24 Q. Why did you bring marijuana?

25 A. Because Lisa told me to bring it.

1 Q. So, what happens after they pick you up?

2 A. We went to the hotel and they checked in.

3 Q. What did you do while they checked in?

4 A. I waited in the car.

5 Q. Okay. How long were they gone?

6 A. About 10, 15 minutes.

7 Q. What happened when they came back?

8 A. We drove to a gas station.

9 Q. For what purpose?

10 A. To get orange juice and cigarettes.

11 Q. Who got orange juice and cigarettes?

12 A. Lisa did.

13 Q. Who paid for it?

14 A. Lisa.

15 Q. After getting orange juice and cigarettes at

16 the gas station, where did you go?

17 A. Then after that we went to the LCBO.

18 Q. What's the LCBO?

19 A. It's the Liquor Control of Ontario which is --

20 Q. The Liquor Control Board of Ontario?

21 A. Yes, where you can get your alcohol.

22 Q. Okay. And did you have to show the defendant

23 where the LCBO was?

24 A. We used GPS, but yes.

25 Q. Okay. And who went into the LCBO?

1 A. R.B. and Lisa did.

2 Q. You waited in the car?

3 A. Yes.

4 Q. Why were you waiting in the car all the time?

5 A. I had injured feet.

6 Q. How did you injure your feet?

7 A. I walked through fire.

8 Q. When did you walk through fire?

9 A. A couple weeks before I went to the hotel.

10 Q. What mental condition were you in that caused
11 you to walk through fire?

12 A. I was drunk with a couple friends.

13 Q. All right. The defendant comes out of the
14 LCBO?

15 A. Yes.

16 Q. Did you see what she came out with?

17 A. Vodka and a case of beer.

18 Q. Okay. Who paid for that vodka and beer?

19 A. Lisa did.

20 Q. What happens after the visit to the gas
21 station and the LCBO?

22 A. We headed back to the hotel.

23 Q. Okay. Tell me what happens when you get to
24 the hotel?

25 A. We got to the hotel and we went upstairs and

1 we started to drink alcohol and smoke marijuana.

2 Q. All right. So you went upstairs to this hotel
3 room?

4 A. Yes.

5 Q. And you started to drink alcohol. Who was
6 drinking what?

7 A. R.B. and Lisa were drinking the vodka and
8 orange juice and I was drinking Budweiser.

9 Q. Who made the vodka and orange juice drinks?

10 A. Lisa did.

11 Q. Did she make one for herself?

12 A. Yes.

13 Q. Did she make one more R.B.?

14 A. Yes.

15 Q. And you were drinking the beer?

16 A. Yes.

17 Q. You said you also started smoking marijuana?

18 A. Yes.

19 Q. And you brought the marijuana?

20 A. Yes.

21 Q. Who smoked marijuana in that hotel room?

22 A. R.B., Lisa and me.

23 Q. What did you smoke it out of?

24 A. Rolling papers.

25 Q. So you used rolling papers?

1 A. Yes.

2 Q. Who rolled the joint?

3 A. I did.

4 Q. And did you see R.B. smoking marijuana?

5 A. Yes, I did.

6 Q. Did you see the defendant smoke marijuana?

7 A. Yes.

8 Q. Did the defendant try to stop R.B. from
9 smoking marijuana?

10 A. No, she did not.

11 Q. Now, were there any other drugs present in the
12 hotel room, Kevin?

13 A. No, there was not.

14 Q. So only the marijuana that you brought?

15 A. Yes.

16 Q. You're positive?

17 A. Yes.

18 Q. Now, that's not what you told the Ontario
19 Provincial Police when they interviewed you about this
20 case; right?

21 A. Yes.

22 Q. What did you tell them?

23 A. I told them that there was coke and Ecstasy.

24 Q. Why did you do that?

25 A. Because I was nervous.

1 Q. Okay. You were nervous and you lied to the
2 police?

3 A. Yes.

4 Q. You know you're under oath here today?

5 A. Yes.

6 Q. Are you telling the truth today?

7 A. Yes.

8 Q. So that we understand, there was only
9 marijuana and alcohol in that room?

10 A. Yes.

11 Q. I'm going to show you a photograph. I'm going
12 to ask you to take a look at this photograph and tell me
13 if you recognize it?

14 A. Yes, I do.

15 Q. What's depicted in that photograph?

16 A. Me and R.B.

17 Q. Where are you and R.B.?

18 A. On the hotel bed.

19 Q. What hotel bed?

20 A. In the Peninsula Inn.

21 Q. Peninsula Inn?

22 A. Yes.

23 Q. Okay.

24 MR. KACAVS: Your Honor, at this point I move
25 to admit this exhibit which is Exhibit 1A for ID as a

1 full exhibit.

2 THE COURT: Any objection?

3 MR. MOIR: No objection.

4 THE COURT: Without objection it will be
5 admitted.

6 (Government's Exhibit 1A admitted.)

7 MR. KAVACAS: May I show the picture to the
8 jury, your Honor?

9 THE COURT: Yes.

10 Q. BY MR. KACAVAS: Who took the photograph,
11 Kevin?

12 A. Lisa did.

13 Q. And when was this photograph taken?

14 A. The Friday that we got there.

15 Q. The Friday that you arrived?

16 A. Yes.

17 Q. Okay. What were you guys doing when that
18 photograph was taken?

19 A. Listening to music and laying on the bed.

20 Q. Okay. What are those on your feet?

21 A. They're booties that I had over my injured
22 feet.

23 Q. Okay. And what is that you're looking at?

24 A. Lisa's laptop.

25 Q. Lisa's laptop?

1 A. Yes.

2 Q. And what are you looking at on that laptop?

3 A. A music video.

4 Q. A music video did you say?

5 A. Yes.

6 Q. Okay. Now, you see over by R.B.?

7 A. Yes.

8 Q. There's a green thing there. What's that?

9 A. R.B.'s turtle pillow, teddy bear.

10 Q. And there's a little table at the foot of the

11 bed?

12 A. Yes.

13 Q. What's on that table?

14 A. Lisa's drink.

15 Q. Okay. And there's a bedside table there. And

16 what's on that table?

17 A. The Budweiser that I was drinking.

18 Q. I'm going to show you what's marked as

19 Government's Exhibit 1B for ID. And I'm going to ask

20 you if you recognize what that photograph shows?

21 A. That's R.B. on the hotel bed.

22 Q. On a hotel bed where?

23 A. In the Peninsula Inn.

24 Q. Okay. And when was that taken?

25 A. I'm pretty sure it was the Friday, the first

1 day.

2 MR. KAVACAS: Your Honor, at this point I'd
3 move to strike the ID on Exhibit 1B and admit it as a
4 full exhibit.

5 THE COURT: Any objection?

6 MR. MOIR: No.

7 THE COURT: Without objection.

8 (Government's Exhibit 1B admitted.)

9 Q. BY MR. KACAVAS: Now, you said this photograph
10 was taken on that Friday?

11 A. Yes.

12 Q. Was this when you were hanging out?

13 A. Yes.

14 Q. Was it taken around the same time as the
15 photograph we just saw of you and R.B. on the bed?

16 A. Yes, it was.

17 Q. Was it taken when you guys were drinking?

18 A. Yes.

19 Q. Was it taken when you guys were smoking
20 marijuana?

21 A. Yes.

22 Q. Who took it?

23 A. Lisa did.

24 Q. I'd like to show you now Government's
25 Exhibit 1C for ID and ask you if you recognize what's in

1 that picture?

2 A. Yes, it's me.

3 Q. And where are you?

4 A. On the hotel bed in the Peninsula Inn.

5 MR. KAVACAS: Your Honor, I'd move at this
6 point to strike the ID and admit this exhibit as a full
7 exhibit.

8 THE COURT: Without objection?

9 MR. MOIR: Without objection.

10 THE COURT: It will be admitted.

11 (Government's Exhibit 1C admitted.)

12 Q. BY MR. KACAVAS: Kevin, when was this
13 photograph taken?

14 A. The same time as the other one, Friday.

15 Q. And who took it?

16 A. Lisa did.

17 Q. So this was taken by Lisa when you were all
18 hanging out in that hotel room?

19 A. Yes.

20 Q. Okay. Kevin, I'm going to show you what's
21 been marked as Exhibit 2 for ID. This video is
22 45 seconds long and I'm going to ask you to watch it by
23 yourself, listen to it by yourself, and when you
24 recognize it, look up at me, tell me you recognize it.

25 THE COURT: Wait a minute. So you have

1 headphones for him?

2 MR. KAVACAS: We do.

3 Q. You don't have to listen to the entirety of

4 this if you don't want to. I want to know when you

5 recognize it. Can you move that microphone for me.

6 Thanks. Put these headphones on.

7 (Witness looking and listening to video.)

8 A. Oh yeah, okay.

9 Q. All right. You recognize that video?

10 A. Yes.

11 Q. What does that video show?

12 A. It's me and R.B. in the hotel bedroom or bed.

13 Q. Okay. When is this video taken?

14 A. The Friday that we arrived.

15 Q. Who took the video?

16 A. Lisa did.

17 MR. KACAVAS: Your Honor, I'd ask to strike

18 the ID from Exhibit 2, admit it as a full exhibit and

19 publish it to the jury.

20 THE COURT: Is there an objection?

21 MR. MOIR: No objection.

22 THE COURT: Without objection it will be

23 admitted.

24 (Government's Exhibit 2 admitted.)

25 Q. BY MR. KACAVAS: Okay, Kevin, before we play

1 this video for the jurors, you say that Lisa, the
2 defendant, took this video?

3 A. Yes.

4 Q. Can you hear anything on the video?

5 A. Yes. Okay, it's a song playing.

6 Q. Okay, what song?

7 A. The artist is MGK. MGK, it's a rapper.

8 Q. What's MGK?

9 A. Machine Gun Kelly.

10 Q. All right. Did you hear anything else on the
11 video?

12 A. Yes, Lisa's voice.

13 Q. Lisa's voice, okay.

14 (Video being played.)

15 Q. All right, Kevin, you heard the defendant say
16 this will be proof you can show Shawn. Who's Shawn?

17 A. A friend of mine at the time.

18 Q. So Shawn's a friend of yours?

19 A. Yes.

20 Q. All right. In this video, you see who is on
21 the bed there?

22 A. R.B.

23 Q. Okay. And that's her little stuffed turtle
24 there next to her?

25 A. Yes.

1 Q. Okay.

2 (Video being played.)

3 Q. Okay, you see that right there? What's that?

4 A. It's the towel to prevent the smoke of
5 marijuana to go in the hallway of the hotel.

6 Q. Who put the towel at the foot of that door?

7 A. Lisa did.

8 Q. Okay.

9 (Video being played.)

10 Q. All right, Kevin, now, after the defendant
11 took this video, what happened?

12 A. After this video we -- us three began kissing
13 and foreplay, and then Lisa said to have sex with R.B.

14 Q. All right. How long after you actually got to
15 the hotel room did you start kissing, the three of you?

16 A. About an hour.

17 Q. Okay. And you testified that the defendant
18 told you to have sex with R.B.?

19 A. Yes.

20 Q. Okay, I'm going to show you another video.

21 Kevin, this video is 67 seconds long. You can watch it
22 in its entirety or tell me when you recognize what you
23 see?

24 A. All right.

25 Q. Put the headphones on, please.

1 (Witness watching and listening to video.)

2 Q. What's depicted in that video, Kevin?

3 A. Me and R.B. having intercourse, sex.

4 Q. Where?

5 A. On the hotel bed in the Peninsula Inn.

6 MR. KACAVAS: Your Honor, I move to strike the
7 ID from Exhibit 3 and admit it as a full exhibit and
8 publish it to the jury.

9 MR. MOIR: Without objection.

10 THE COURT: Without objection.

11 (Government's Exhibit 3 admitted.)

12 Q. BY MR. KACAVS: Okay, Kevin, before we play
13 this video for the jurors, what's it going to show them?

14 A. Well, I was told that it was R.B.'s first
15 time.

16 Q. Okay, I didn't ask what you were told. What's
17 it going to show them?

18 A. That me and R.B. had -- or R.B. had
19 intercourse, sex.

20 Q. And what can you hear? Can you hear anything
21 in the background?

22 A. Yes. Music and Machine Gun Kelly again.

23 Q. About how long after that first video we saw
24 was this video taken?

25 A. Right after.

1 Q. Okay. Go ahead.

2 (Video being played.)

3 Q. All right, Kevin, who took that video?

4 A. R.B. did -- I mean Lisa, sorry.

5 Q. You're on the bed having sex with R.B.; right?

6 A. Yes.

7 Q. The defendant took that video?

8 A. Yes.

9 Q. Was there anybody else in the room?

10 A. No, there was not.

11 Q. And that video was taken when?

12 A. The Friday that I was there.

13 Q. I think you testified about an hour -- within
14 an hour of arriving at the room?

15 A. Yes.

16 Q. Now, was that the only time you had sexual
17 intercourse with R.B. that weekend?

18 A. No, it was not.

19 Q. Was that the only time that you were video
20 recorded having sexual intercourse that weekend?

21 A. No, it was not.

22 Q. What was the next time you had sexual
23 intercourse with R.B. that was video recorded?

24 A. When R.B. is on all fours and I'm behind her.

25 Q. Okay. Is there a time before that?

1 A. No, there was not.

2 Q. Okay. Let me ask, do you remember what day
3 the next video was produced?

4 A. Saturday.

5 Q. The next one was done on Saturday, the day
6 after you arrived; right?

7 A. Yes.

8 Q. You arrived on Friday?

9 A. Yes.

10 Q. All right. I'm going to show you another
11 video. Kevin, this video is 31 seconds long. I'm going
12 to ask you to watch it. You can watch it in its
13 entirety or until you recognize what the video shows.

14 A. All right.

15 (Witness watching and listening to video.)

16 Q. You recognize that? What does that video
17 show?

18 A. Me and R.B. having intercourse in the hotel of
19 the Peninsula Inn on the bed.

20 Q. Okay. When was this video taken?

21 A. Saturday.

22 Q. And -- where are you and where's R.B., what's
23 the position you're in?

24 A. R.B. is on top and I'm on bottom.

25 Q. Now, you earlier testified that the next time

1 you had sex after that Friday you were behind R.B.

2 Having seen this video; is that true?

3 A. Yes.

4 Q. This video, though, was taken Saturday?

5 A. Saturday.

6 Q. This video was taken on Saturday?

7 A. Yes, yes.

8 MR. KAVACAS: Your Honor, at this point I move
9 to strike the ID and move Exhibit 4 as a full exhibit
10 and show it to the jury.

11 MR. MOIR: No objection.

12 THE COURT: Without objection.

13 (Government's Exhibit 4 admitted.)

14 Q. BY MR. KACAVAS: All right, Kevin, before we
15 play this video for the jurors, who took it?

16 A. Lisa did.

17 Q. All right. What can you hear on it?

18 A. Music, Machine Gun Kelly again.

19 Q. What else can you hear on it?

20 A. R.B.

21 Q. Is anybody doing any talking?

22 A. Sorry, Lisa is.

23 Q. Lisa is talking?

24 A. Yes.

25 (Video being played.)

1 Q. All right, Kevin, you were wearing a condom in
2 that video?

3 A. Yes.

4 Q. Who gave you the condom or did you bring one
5 on your own?

6 A. Lisa brought some.

7 Q. And you said this video was taken on Saturday?

8 A. Yes.

9 Q. What were you guys doing before this video was
10 taken?

11 A. Drinking and smoking marijuana.

12 Q. Anything else?

13 A. No, there was not.

14 Q. Well, was R.B. the only person you had sex
15 with that weekend?

16 A. No.

17 Q. Did you have sex with the defendant too?

18 A. Yes.

19 Q. When would you have sex with the defendant?

20 A. Right after R.B.

21 Q. How about on that Friday, the day before, did
22 you have sex with the defendant after you had sex with
23 R.B.?

24 A. Yes, I did.

25 Q. How about on Saturday. Did you have sex with

1 the defendant after this video?

2 A. Yes.

3 Q. I'm going to show you another video. This is
4 the last video. It's 44 seconds long. Same rule
5 applies, Kevin. You can watch it in its entirety or
6 tell me when you recognize it; okay?

7 A. Okay.

8 (Witness watching and listening to video.)

9 Q. You recognize what that video shows?

10 A. Yes.

11 Q. What's that?

12 A. It's the Saturday night, R.B. on all fours and
13 me behind her on the bed.

14 Q. Okay, you say this was Saturday night?

15 A. Yes.

16 Q. Okay. So when was the video we last saw with
17 R.B. on top of you, when was that taken?

18 A. Right after.

19 Q. Are you sure or are you guessing?

20 A. I don't know exactly.

21 Q. Okay. But you're sure both of them were taken
22 that Saturday?

23 A. Yes, yes, they both were.

24 Q. And you're sure both of them were taken by the
25 defendant?

1 A. Yes.

2 Q. And where are you in that video?

3 A. Behind R.B. having intercourse.

4 Q. Where?

5 A. On the hotel bed in the Peninsula Inn.

6 MR. KAVACAS: Your Honor, I'd move to strike
7 the ID on Exhibit 5 and admit it as a full exhibit.

8 THE COURT: Without objection.

9 MR. MOIR: Yes, no objection.

10 (Government's Exhibit 5 admitted.)

11 (Video being played.)

12 Q. BY MR. KACAVAS: All right, Kevin, we've
13 watched three videos now of your sexual intercourse with
14 R.B.; right?

15 A. Yes.

16 Q. Was that the only time, were those the only
17 times you had sex with R.B. that weekend?

18 A. No, it was not.

19 Q. You testified that you also had sex with the
20 defendant?

21 A. Yes.

22 Q. Was that ever recorded?

23 A. No, it was not.

24 Q. When you had sex with the defendant, where was
25 R.B.?

1 A. In the room.

2 Q. All right. How many times did you have sex
3 with the defendant compared with sex with R.B. that
4 weekend?

5 A. About the same.

6 Q. What else would you do when you were having
7 sex with both of them, what else were you three doing?

8 A. Drinking and smoking marijuana.

9 Q. Where did you sleep that weekend?

10 A. In between both R.B. and Lisa.

11 THE COURT: Counsel, we've got to take a break
12 at some point in the next couple minutes.

13 MR. KAVACAS: I am five minutes away, your
14 Honor.

15 THE COURT: Okay.

16 Q. You slept on the bed, all three of you?

17 A. Yes.

18 Q. And where did you sleep on that bed?

19 A. In the middle of R.B. and Lisa.

20 Q. Did you ever leave the hotel that weekend?

21 A. No, I did not.

22 Q. Why not?

23 A. I had injured feet and was not able to walk.

24 Q. Did R.B. and the defendant leave the hotel
25 room that weekend?

1 A. Yes, they did.

2 Q. Do you remember when?

3 A. I recall Saturday.

4 Q. Okay. Do you recall the defendant telling you
5 where they went?

6 A. To Niagara Falls on our side, Ontario side.

7 Q. And how did you guys eat that weekend?

8 A. We got pizza delivered to the hotel.

9 Q. Just pizza, is that all you ate?

10 A. Yes.

11 Q. I'm showing you Exhibit 1I for ID and ask you
12 if you recognize that?

13 A. Yes, it's R.B., Lisa and me.

14 Q. Where are you?

15 A. In the hotel bed.

16 Q. In what hotel?

17 A. In the Peninsula Inn.

18 MR. KACAVAS: Your Honor, I'd move to strike
19 the ID and publish this full Exhibit 1I to the jury.

20 THE COURT: Without objection?

21 MR. MOIR: No objection.

22 THE COURT: It will be admitted.

23 (Government's Exhibit 1I admitted.)

24 Q. BY MR. KACAVAS: So Kevin, what's this
25 photograph show?

1 A. Me holding my private part with R.B. on the
2 right, my right, and Lisa on my left.

3 Q. What's the defendant wearing?

4 A. The defendant is wearing a blue shirt.

5 Q. Okay. How was this photograph taken?

6 A. By the timer on the camera.

7 Q. Was there anybody else in the room who took
8 this photograph?

9 A. No, there was not.

10 Q. Where was the camera placed?

11 A. On the bed or on the table.

12 Q. When was this photograph taken?

13 A. The Monday we were leaving.

14 Q. The Monday morning you were checking out of
15 the hotel?

16 A. Yes.

17 Q. I want to show you Exhibit 1H for ID and ask
18 you if you recognize that?

19 A. Yes. It's R.B. on my left and Lisa on my
20 right.

21 Q. Where is that photo taken?

22 A. In the Peninsula Inn.

23 Q. All right.

24 MR. KAVACAS: Your Honor, I move to strike the
25 ID, admit it as a full exhibit and publish to the jury.

1 MR. MOIR: Without objection.

2 THE COURT: Without objection.

3 (Government's Exhibit 1H admitted.)

4 Q. BY MR. KACAVAS: Kevin, what does this
5 photograph depict?

6 A. R.B. and Lisa and me.

7 Q. Okay, is that the same -- does that appear to
8 be the same shirt the defendant was wearing in the
9 previous photo we saw?

10 A. Yes, it was.

11 Q. How was this photo taken?

12 A. The one, this one -- this one is actually the
13 previous one I had just seen.

14 Q. I'm sorry?

15 A. This one is taken after the one I just seen.

16 Q. Right, right. How is this photo taken?

17 A. Oh, by the timer on the camera.

18 Q. And where was the camera placed?

19 A. On the TV.

20 Q. Okay. So this one was taken on the Monday
21 before you checked out?

22 A. Yes.

23 Q. Just a couple more questions. What happened
24 after you all checked out of the hotel?

25 A. R.B. and Lisa went and checked out and I

1 stayed behind, and then I went and -- I left the hotel
2 and I went with R.B. and Lisa and they drove me home.

3 Q. After they drove you home and dropped you off,
4 did you continue to have contact with them over the
5 Internet?

6 A. Yes, over Skype, yes.

7 Q. Did you ever meet them again in person?

8 A. No, I did not.

9 Q. Kevin, have you been arrested before?

10 A. Yes, I have.

11 Q. How old were you when you were arrested?

12 A. Seventeen turning 18.

13 Q. What were you arrested for?

14 A. Possession of marijuana.

15 Q. And how were you charged?

16 A. Um --

17 Q. Let me clarify. Were you charged as a
18 juvenile as we say here or a minor as you say in Canada?

19 A. Yes, I was charged as a minor.

20 Q. What does that mean?

21 A. It means it's a minor record and it's not an
22 adult record.

23 Q. Have you ever been arrested -- do you have any
24 other arrests?

25 A. No, I do not.

1 Q. Were you arrested in this case?

2 A. No, I was not.

3 Q. You met with the Ontario Provincial Police;
4 right?

5 A. Yes.

6 Q. With Detective Constable Doug Reese?

7 A. Yes.

8 Q. He arrested you when he interviewed you,
9 didn't he?

10 A. Yes.

11 Q. So, are you facing charges in Canada over
12 this?

13 A. No, I'm not.

14 Q. Why not?

15 A. I was told by Doug Reese that I was not.

16 Q. Okay. What were you told by Doug Reese?

17 A. That I was arrested and questioned.

18 Q. Okay. And did I make any promises to you to
19 get you to testify here?

20 A. No, you did not.

21 Q. Did Doug Reese make any promises to you to get
22 you to testify here?

23 A. No, he did not.

24 MR. KACAVAS: Your Honor, if I may be
25 permitted under 611 to sort of develop his testimony a

1 little bit?

2 THE COURT: Yes.

3 Q. Kevin, you were told by Detective Reese, were
4 you not, that you wouldn't be charged for these crimes
5 if you came here to testify truthfully?

6 A. Yes.

7 Q. All right. So the condition of you not being
8 charged is that you testify truthfully?

9 A. Yes.

10 Q. Did you do that here today?

11 A. Yes.

12 Q. Thank you.

13 MR. KACAVAS: I have nothing further, your
14 Honor.

15 THE COURT: All right, let's take our morning
16 break now, members of the jury. We will break for about
17 15 minutes.

18 (Recess taken.)

19 THE COURT: Counsel, you may cross-examine.

20 MR. MOIR: Thank you, your Honor.

21 CROSS-EXAMINATION

22 BY MR. MOIR:

23 Q. Good morning, Mr. Watson.

24 A. Good morning.

25 Q. Do you mind if I call you Kevin?

1 A. That's all right, yup.

2 Q. Okay, thank you. I've never met you before.

3 I'm Jim Moir.

4 A. Okay.

5 Q. Now, I want to cover some of the same
6 territory that's already been covered. Obviously you
7 told the story already that you met R.B. on line; right?

8 A. Yes.

9 Q. Okay. And at some point, you know, fairly
10 quickly you started talking about things with her;
11 right?

12 A. Yes.

13 Q. And as you said, you talked about your country
14 and my country and just stuff; right?

15 A. Yes.

16 Q. But it did turn to sex; right?

17 A. Yes.

18 Q. And you guys had some pretty explicit sexual
19 conversations; right?

20 A. Yes.

21 Q. I mean, we're talking about pretty --
22 explicit, I guess, is the word; right?

23 A. Yes.

24 Q. And it was a mutual thing, though; right?

25 A. Yes.

1 Q. I mean, you didn't force her to talk about
2 sex; right?

3 A. No.

4 Q. And apparently from what you can tell, because
5 you're seeing her as you're doing this, right, you're
6 able to see her because you're Skyping; right?

7 A. Yes.

8 Q. Okay. You can see her and she can see you?

9 A. Yes.

10 Q. You're talking. And then it sort of becomes
11 physical after that; right? You told this jury already
12 at certain points, you know, you would masturbate and
13 she would masturbate; right?

14 A. Yes.

15 Q. And that would be done for each other; right?

16 A. Can you say it again? Sorry.

17 Q. I mean you did for yourself and for each
18 other; right?

19 A. Yes.

20 Q. Okay. And again, you didn't force her to do
21 that, did you?

22 A. No, I did not.

23 Q. And she didn't force you to do it; right?

24 A. No, she did not.

25 Q. And certainly the very beginning part, at

1 least for the first weeks at least, you had this going
2 on and apparently R.B.'s mother didn't know about it;
3 right?

4 A. Yes.

5 Q. And then R.B.'s mother found out; right?

6 A. Yes.

7 Q. And initially, at least, she was angry about
8 it; right?

9 A. Yes.

10 Q. I mean, she was the one that, look, how old
11 are you; right? She wanted to know how old you were?

12 A. Yes.

13 Q. And you told her?

14 A. My age.

15 Q. Which was 18 at the time; right?

16 A. Nineteen.

17 Q. Nineteen, sorry. Okay. And she told you how
18 old R.B. was; right?

19 A. Yes.

20 Q. And so in any event, initially at least, mom
21 didn't like that but then it changed; right?

22 A. Yes.

23 Q. But again, up to that whole period of time
24 initially before mom ever found out, this whole thing
25 was, again, nobody forced anybody to do anything; right?

1 A. No.

2 Q. Now, I want to jump ahead to Canada now. When
3 you were in Canada, as you told this jury, you had sex
4 with R.B.; right?

5 A. Yes.

6 Q. And once again, did you make her have sex with
7 you?

8 A. No, I did not.

9 Q. I mean, did it appear that she wanted to have
10 sex with you?

11 A. Yes, it did.

12 Q. I mean, you knew that from all your
13 conversations; right?

14 A. Yes.

15 Q. And all the mutual stuff you did while you
16 were having this online relationship; right?

17 A. Yes.

18 Q. And when she came up there both of you -- I
19 mean, her mom didn't force her to have sex with you;
20 right?

21 A. No, she did not.

22 Q. All right. Nothing, I mean, she didn't do
23 anything to make her have sex, because R.B. wanted to
24 have sex; right?

25 A. Yes.

1 Q. Just like you wanted to have sex?

2 A. Yes.

3 Q. Now, you knew at the time that she was too
4 young; right?

5 A. Yes.

6 Q. And I guess my question is, why did you then
7 proceed to have sex with her when you knew it's illegal?

8 A. Because we were drinking and smoking marijuana
9 under her mom's permission.

10 Q. Well, let me ask you a question. I mean, the
11 language you just used didn't sound like Kevin Watson.
12 Where did you get that line from? Did you talk to these
13 people about this?

14 A. I can't have my own speech?

15 Q. No, I'm just wondering. It just didn't seem
16 to sound like you. Did anybody over here on this table
17 give you responses?

18 A. No, they did not. No, they did not.

19 Q. Okay. So, you're telling me that if there was
20 no alcohol and no marijuana, there would have been no
21 sex?

22 A. Um, I do not know.

23 Q. Well, you would have had sex; right?

24 A. I could have.

25 Q. I mean, I just want to get this straight.

1 They were coming up from the United States to meet you;
2 right?

3 A. Yes.

4 Q. And to see the sites; right?

5 A. Yes.

6 Q. And initially the plan was you were going to
7 take them around and show them Niagara Falls and that
8 kind of thing; right?

9 A. Yes.

10 Q. But then you burned your feet; right?

11 A. Yes.

12 Q. Walking through a fire?

13 A. Yes.

14 Q. And you really weren't able to walk?

15 A. Yes.

16 Q. All right. And so you're telling me when they
17 came up there was no plan to engage in sex?

18 A. Yes, there was.

19 Q. Was the plan I'm only going to have sex if I
20 drink and have marijuana?

21 A. No.

22 Q. So you were going to have sex anyway; right?

23 A. Yes.

24 Q. I mean, so when this whole thing, when you
25 started talking about marijuana and alcohol and this

1 kind of stuff, you were going to have sex anyway;
2 weren't you?

3 A. Yes.

4 Q. I mean, it didn't require that to have sex;
5 right?

6 A. No.

7 Q. Okay. Because really am very curious, Kevin,
8 where that came from, saying I had to have alcohol and
9 sex -- marijuana before I have sex. I just don't know
10 where that came from. Can you tell me?

11 MR. KAVACAS: Objection. Asked and answered.

12 THE COURT: Overruled.

13 A. It just happened that way. Sorry, can you ask
14 it again because I don't know what you're trying to do.

15 Q. Correct me if I'm wrong, I mean, you told the
16 jury just a few moments ago that, I think I sort of
17 asked you a fairly simple question, and you said, well,
18 it was only when Lisa gave us marijuana and alcohol that
19 we had sex, something like that. Do you recall that?

20 A. Okay, I may have said that, but the plan was
21 for Lisa and R.B. to kind of have sex with me, that's
22 their plan.

23 Q. You already were having virtual sex, right, in
24 other words, the online sex; right?

25 A. Yes.

1 Q. So the big step in going from there to have
2 real sex was to be expected; right?

3 A. Yes.

4 Q. And that's why you met with them; right?

5 A. Yes.

6 Q. Okay. And so it didn't require alcohol and
7 marijuana?

8 A. No, it did not.

9 Q. For you or anybody else?

10 A. No.

11 Q. It was just a little plus; right?

12 A. Yes.

13 Q. Okay. And you're the guy who brought the
14 marijuana; right?

15 A. Yes.

16 Q. I mean, that's because you have a source for
17 marijuana?

18 A. Yes.

19 Q. I mean, it's a relative; right?

20 A. Yes.

21 Q. Somebody grows it?

22 A. No.

23 Q. Oh, okay. All right. Going back to the
24 question I think I left a while back, you go to the
25 hotel, your intention is to have sex with both of these

1 women; right?

2 A. Yes.

3 Q. And again, nobody is forcing you to have sex
4 with R.B. or Lisa; right?

5 A. No.

6 Q. And nobody is forcing R.B. to have sex with
7 you?

8 A. No.

9 Q. And nobody is forcing Lisa to have sex with
10 you; right?

11 A. No.

12 Q. And it was all mutual and voluntary; right?

13 A. Yes.

14 Q. Okay. I mean, you weren't paid do this;
15 right?

16 A. No.

17 Q. R.B. wasn't paid; right?

18 A. No.

19 Q. And nobody held a gun to her head; right?

20 A. No.

21 Q. And nobody offered her anything to do it;
22 right?

23 A. No.

24 Q. Okay. I want to go back to something
25 different. You got arrested in Canada back in November;

1 right?

2 A. Yes.

3 Q. And you were met by I guess it was Detective
4 Constable Reese, Doug Reese?

5 A. For my charge?

6 Q. Yes.

7 A. On the possession?

8 Q. No, no, I'm talking about when you got
9 arrested in Canada --

10 A. Yes.

11 Q. -- for this stuff here.

12 A. Okay, yes.

13 Q. Because you had sex with a minor; right?

14 A. Yes.

15 Q. And they said you were making child
16 pornography; right?

17 A. Yes.

18 Q. I mean, so those are the charges you're
19 looking at. It's pretty serious stuff?

20 A. Yes.

21 Q. And they made sure you were quite aware it was
22 serious; right?

23 A. Yes.

24 Q. I mean, they scared the heck out of you;
25 right?

1 A. Yes.

2 Q. And so you sat down with Detective Constable
3 Reese; right?

4 A. Yes.

5 Q. And apparently up there they make sure that
6 they record the interviews; right?

7 A. Yes.

8 Q. And you were told very clearly this is being
9 audio recorded?

10 A. Yes.

11 Q. And video recorded; right?

12 A. Yes.

13 Q. And do you know that a copy of that was
14 provided to me?

15 A. Yes.

16 Q. Okay. Which makes sense.

17 A. Yes.

18 Q. So we know exactly what you said in that
19 interview; right?

20 A. Yes.

21 Q. Because if you don't audio and tape-record it
22 and somebody is summarizing what you said, that's
23 probably not as good; right?

24 A. Yes.

25 Q. So we know exactly what was said there by

1 looking at it; right? And obviously during that
2 interview, you express some real concerns about the
3 charges against you; right?

4 A. Yes.

5 Q. You don't want to go to jail; right?

6 A. No.

7 Q. In fact, you asked them, am I going to jail
8 for this?

9 A. Yes.

10 Q. And he said it depends?

11 A. Yes.

12 Q. And what did it depend on?

13 A. On me telling the truth.

14 Q. All right. And how did one figure out what
15 the truth was?

16 MR. KAVACAS: Objection. Foundation.

17 MR. MOIR: Understanding --

18 THE COURT: One second, please. I'm not sure
19 I understand the question. Why don't you rephrase it.

20 MR. MOIR: I'm happy to rephrase it, yes.

21 Q. What's your understanding what the truth
22 means?

23 A. Telling the truth.

24 Q. And so when you met with Constable Reese up
25 there, you told the truth?

1 A. No, I did not on some of the facts.

2 Q. Which ones?

3 A. About the drugs.

4 Q. Okay. I think Mr. Kacavas talked a little bit
5 about that with you. You were not truthful about the
6 drugs; right?

7 A. Yes.

8 Q. He had asked you what drugs were there; right?

9 A. Yes.

10 Q. And there was marijuana there; right?

11 A. Yes.

12 Q. But you were untruthful, you lied to him;
13 right?

14 A. Yes.

15 Q. You said no, there was actually cocaine and
16 Ecstasy?

17 A. Yes.

18 Q. And that was never there?

19 A. No, it was not.

20 Q. Why did you make that up?

21 A. Because I was nervous and I was scared.

22 Q. Well, isn't it more typical when you're
23 nervous and you have a police officer questioning you,
24 you're going to not make up stuff that gets you further
25 in trouble, you're going to say less, aren't you?

1 A. I don't know.

2 Q. Well, have you seen that interview recently?

3 A. No, I have not.

4 Q. Do you recall Constable Reese basically
5 hammering on you insisting that there were other drugs
6 there?

7 A. Yes, I recall that.

8 Q. You told him it was just marijuana; right?

9 A. Yes.

10 Q. And he just whaled on you; right?

11 A. Yes.

12 Q. He didn't believe you; right?

13 A. Yes.

14 Q. And the only way to get it to stop with him
15 was to say, yeah, there was cocaine and Ecstasy. Isn't
16 that how that happened?

17 A. Yes.

18 Q. And you didn't just make it up. He was
19 telling you it was there; right? You agree with me?

20 A. No, I made it up.

21 Q. Isn't he the one who used cocaine first?
22 Didn't he say there was cocaine there, didn't he say?

23 A. Not that I recall.

24 Q. Okay. Okay. But he wasn't going to let you
25 go until you said there were other drugs there; right?

1 A. Not that I recall.

2 Q. All right. In that interview you admitted to
3 having sex with an underage girl; right?

4 A. Yes.

5 Q. You admitted to providing drugs; right?

6 A. Not in that interview.

7 Q. No, you didn't at that point; right?

8 A. No.

9 Q. You told him that Lisa brought the drugs;
10 right?

11 A. Yes.

12 Q. You told him she probably brought them from
13 the United States?

14 A. Yes.

15 Q. Came across the border with drugs. And you
16 also refused to tell him that you went to buy alcohol
17 with them; right?

18 A. Yes.

19 Q. You said that she brought the alcohol from the
20 United States; right?

21 A. Yes.

22 Q. Why did you say that?

23 A. Because I was nervous at the time, just I like
24 said, and now I'm under oath and I'm telling the truth.

25 Q. So being under oath makes a difference?

1 A. Yes.

2 Q. I mean, if you're talking to a police officer
3 and you're not under oath, you can lie to him?

4 A. No.

5 Q. So why does being under oath make a
6 difference. Isn't it good policy to tell the truth?

7 A. Yes, it's a good thing to tell the truth, yes.

8 Q. Okay. I'm just wondering if the oath is what
9 causes you to tell the truth versus anything else?

10 A. I just didn't really know what to say while I
11 was interviewed and I was under pressure at the time.

12 Q. You're not under pressure today?

13 A. Yes, I am, but I'm more confident now.

14 Q. Why are you more confident today?

15 A. Because I've been discussing it.

16 Q. With who?

17 A. Just myself thinking about it more.

18 Q. Anybody at this table you discuss it with?

19 A. No.

20 Q. Ever?

21 A. No.

22 Q. You never met with these people?

23 A. Yes, I've met them.

24 Q. You've talked about it though; right? It's
25 not wrong to talk with them about a case.

1 A. Okay, yes, I have.

2 Q. They're preparing you to testify; right?

3 A. Yes.

4 Q. It's okay to do that.

5 A. Yes.

6 Q. So you did talk to them. How long did you
7 spend talking to them, if you recall?

8 A. For a couple hours.

9 Q. And that was just recently; right?

10 A. Yes.

11 Q. It was like on Sunday?

12 A. Yes.

13 Q. Okay. You came down from Canada, met with
14 them, and you've been around here for a couple days;
15 right?

16 A. Yes.

17 Q. Okay. Going back to the interview with
18 Constable Reese, you said most of what you told him is
19 the truth in that; right?

20 A. Yes.

21 Q. You admitted to having sex with a minor which
22 was huge; right?

23 A. Yes.

24 Q. And basically you admitted to the crimes;
25 right?

1 A. Yes.

2 Q. And he said yes, you had sex with a minor and,
3 you know, you were creating child porn; right? That's
4 what he told you; right?

5 A. Yes.

6 Q. So you admitted to all basically the bad stuff
7 you did; right?

8 A. Yes, but I did not film it, so I did not make
9 it.

10 Q. I understand. You participated. I
11 understand. They explained that to you; right?

12 A. Yes.

13 Q. Okay. But basically it's pretty true with
14 Constable Reese, you admitted to everything bad you did;
15 right?

16 A. Yes.

17 Q. Except I think the marijuana part but that's
18 pretty minor; right?

19 A. Yes.

20 Q. And you had that in the past, not a big deal?

21 A. Yes.

22 Q. But everything else you admitted to. All the
23 stuff. And you were as complete and thorough in this
24 two-hour interview as you could be; right?

25 A. Yes.

1 Q. I mean it was a long interview?

2 A. Yes.

3 Q. Okay. So during that interview you -- and
4 again, he pushed you pretty hard; right?

5 A. Yes.

6 Q. During that interview you told him that Lisa
7 said we want to come to Canada to make a porn?

8 A. Yes.

9 Q. No you didn't, did you? It's not in there, is
10 it?

11 A. Sorry, can you repeat that?

12 Q. You never said that to Constable Reese, did
13 you?

14 A. Not at the time.

15 Q. No. In fact, when did you first say that to
16 anybody in this case?

17 A. When I was talking with them.

18 Q. On Sunday; right?

19 A. Yes.

20 Q. And that was over, what, in this building
21 somewhere?

22 A. Pardon?

23 Q. That was somewhere in this building you met
24 with them?

25 A. Yes.

1 Q. Okay. And so the first time you mentioned
2 anything about Lisa saying I want to make a porno was to
3 them; right?

4 A. Yes.

5 Q. On Sunday?

6 A. That's because I wasn't questioned with Reese
7 about that.

8 Q. Was that right?

9 A. Yes.

10 Q. He questioned you for pretty much two hours,
11 questioned you about a lot of stuff, didn't he?

12 A. Yes.

13 Q. Didn't he ask you extensive questions about
14 how this meeting with you and Lisa and R.B. came about?

15 A. Yes.

16 Q. Didn't he ask you extensive questions about
17 how you met?

18 A. Yes.

19 Q. Didn't he ask you extensive questions about
20 the plan to come up?

21 A. Yes.

22 Q. I mean, he asked you all that stuff; right?
23 Basically the same stuff they were talking about; right?

24 A. Yes. It just didn't come out.

25 Q. You just didn't think of it at that time;

1 right?

2 A. No.

3 Q. Okay. And so you were doing incredible
4 amounts of, what, texting I guess you call it with R.B.
5 and Lisa?

6 A. Yes.

7 Q. I mean, we're talking about a lot; right?

8 A. Yes.

9 Q. Has anybody ever showed them to you?

10 A. No.

11 Q. Have you ever seen what the volume of them is?

12 A. No.

13 Q. We're talking about from the time you met
14 until let's say going to Canada, how many texts do you
15 think there were?

16 A. A lot.

17 Q. I mean tens of thousands?

18 A. Yes.

19 Q. I mean, I was provided in discovery just this
20 stuff here which is texts. I'm not saying they are all
21 texts between you and them, but this kind of thing sound
22 about right, a lot of texting going on?

23 A. Yes.

24 Q. All right. So in those texts, going back and
25 forth, back and forth, anything in those texts written

1 about you and Lisa discussing coming to Canada to make a
2 porno as you said?

3 A. Yes.

4 Q. There is something in writing in there?

5 A. Yes.

6 Q. So I'll find a text in there about it?

7 A. You -- yes.

8 Q. Okay, so there should be one. So I'm sure if
9 there is one, because I know the government spent a lot
10 of time with this, I'm sure they will pull it out and
11 show us; right?

12 A. Yes.

13 Q. So I'll count on them for that.

14 A. Yes.

15 Q. Okay. So you're sure it's been done in
16 writing, says we can make a porno?

17 A. Yes, there could be, yes.

18 Q. Might be. Might not be?

19 A. Might not be.

20 Q. Why wouldn't there be?

21 A. I don't know, because most of the time we were
22 talking over Skype.

23 Q. Okay. So you're saying there is one or isn't
24 one?

25 A. I don't know. As you can see, there are so

1 many texts there, I have no clue. I haven't had a cell
2 phone for a couple months right now, and I have no clue
3 and most of our stuff is Skyped.

4 Q. Okay. Now, when you came here, from jumping
5 back again, to meet with the U.S. Attorney and the
6 special agent; right?

7 A. Yes.

8 Q. The three of you sat and met; right?

9 A. Yes.

10 Q. Okay. And did they specifically ask you this
11 question, did Lisa Biron ever tell you that they planned
12 to come up and make a porno?

13 A. Yes.

14 Q. They asked you specifically that question;
15 right?

16 A. Yes.

17 Q. Because they knew it's an important question
18 to be answered; right?

19 A. Yes.

20 Q. And obviously you've got to tell the truth;
21 right?

22 A. Yes.

23 Q. And you need to please these people; right?

24 A. No.

25 Q. Well, you want them to call up the Ontario

1 authorities and say, hey, this guy did a great job;
2 right?

3 A. Yes.

4 Q. Right. And so you really need to please them;
5 right?

6 A. Yes.

7 Q. Right. And so when they asked you a question,
8 I guess it was a very leading question, right, saying
9 she did this, didn't she?

10 A. Yes.

11 Q. And you said yes, she did.

12 A. Yes.

13 Q. Right? And it certainly helps your case;
14 right?

15 A. Yes.

16 Q. Okay. Think about it, I mean, you're telling
17 us that Lisa said we want to come to Canada to make a
18 porno; right?

19 A. Yes.

20 Q. And I should ask you this, have you ever
21 watched pornography?

22 A. Yes.

23 Q. I mean legal pornography I'm talking about?

24 A. Yes.

25 Q. When people make a porno, what do they look

1 like?

2 A. People. Humans.

3 Q. Beginning to end; right?

4 A. Yes.

5 Q. They come in, they're having sex, you know how
6 those are; right?

7 A. Yes. But there's also home videos that do
8 little clips.

9 Q. Are there?

10 A. Yes.

11 Q. Have you seen those?

12 A. Yes.

13 Q. Where do you see those?

14 A. On the Internet.

15 Q. Okay, so little clips on the Internet?

16 A. Yes.

17 Q. Okay, home --

18 A. They can range from ten minutes to
19 two minutes.

20 Q. I'm sorry?

21 A. They can range from ten minutes to
22 two minutes.

23 Q. Sure, sure. And so the whole idea that, you
24 know, coming up to make a porno -- let me ask you a
25 question. You're having sex with R.B.; right?

1 A. Yes.

2 Q. And is there a discussion, okay, let's set up
3 the cameras so we can make a porno?

4 A. No.

5 Q. No, there isn't; right?

6 A. No.

7 Q. In fact, you were having sex; right?

8 A. Yes.

9 Q. And Lisa picks up the camera and does, again,
10 like you say, a short video; right?

11 A. Yes.

12 Q. Right. Doesn't ask you to set this whole
13 thing up; right? You're having sex and then she does
14 the picture; right?

15 A. Yes.

16 Q. Just a couple of things. I know that Mr.
17 Kacavas talked about that little green turtle in the
18 pictures?

19 A. Yes.

20 Q. Do you know what that turtle is for?

21 A. No, I do not.

22 Q. Have you ever seen anything carried inside it?

23 A. What I seen was makeup.

24 Q. Right.

25 A. For R.B.

1 Q. Right. It's a makeup kit; right?

2 A. Yes.

3 Q. Okay. Finally, I know we saw a couple of
4 photos here; right?

5 A. Yes.

6 Q. How many photos do you think were taken in
7 that room, I'm just talking about still photos right
8 now, between cell phone, iPhone, and all this other
9 stuff, over the course of the weekend?

10 A. The ones that we have?

11 Q. Aren't there others?

12 A. No, not in the hotel, no there's not.

13 Q. How about out at the falls and that kind of
14 thing, did they come back and show you those pictures?

15 A. I think a couple. I don't remember.

16 Q. Did they talk about taking the Maid of the
17 Mist, for example?

18 A. Yes.

19 Q. And you know what the Maid of the Mist is;
20 right?

21 A. Yes.

22 Q. Have you been on it before?

23 A. Yes.

24 Q. So you know it's a pretty exciting ride;
25 right?

1 A. Yes.

2 Q. And so they went out, they saw the falls, they
3 took the Maid of the Mist, this kind of thing; right?

4 A. Yes.

5 Q. And you would have gone normally except you
6 burned your feet; right?

7 A. Yes.

8 MR. MOIR: If I can have just one moment, your
9 Honor.

10 THE COURT: Yes.

11 MR. MOIR: See if I'm missing anything here.
12 No, I think that's it. Thank you very much, Kevin.

13 THE COURT: Thank you. Any redirect?

14 MR. KAVACAS: Very briefly, your Honor.

15 REDIRECT EXAMINATION

16 BY MR. KACAVAS:

17 Q. Kevin, I want to take you back to some
18 questions the defendant's lawyer asked you about the
19 Skype sex; okay?

20 A. Yup.

21 Q. So you're Skype sexting with R.B. first?

22 A. Yes.

23 Q. And the defense lawyer said to you the
24 defendant found out about it?

25 A. Yes.

1 Q. She was angry?

2 A. Yes.

3 Q. How do you know she was angry?

4 A. She went on to Skype, too, and started getting
5 mad and wanted to know who I was.

6 Q. Okay. And she wanted to know how old you
7 were?

8 A. Yes.

9 Q. Did you tell her?

10 A. Yes.

11 Q. And after she found out who you were, was she
12 angry still?

13 A. No. She began to like what she seen, liked my
14 looks, and she continued to want me to take off my
15 clothes and do more than just that, like masturbate to
16 her.

17 Q. So she wasn't angry with you anymore?

18 A. No, she was not.

19 Q. She was having Skype sex with you?

20 A. Yes.

21 MR. KAVACAS: Thank you, your Honor.

22 THE COURT: All right. Do you need to
23 follow-up on that last point?

24 MR. MOIR: No, your Honor, thank you.

25 THE COURT: All right. Thank you, sir, you

1 can step down. Call your next witness.

2 MR. KAVACAS: Thank you, your Honor. The
3 United States calls Brandon Ore.

4 THE COURT: Come around here, sir, right over
5 to the side and follow this gentleman's directions,
6 okay?

7 THE CLERK: Step into the witness box and
8 raise your right hand.

9 BRANDON ORE

10 having been duly sworn, testified as follows:

11 THE CLERK: Thank you. Would you please state
12 your name and spell your last name for the record.

13 THE WITNESS: Brandon Ore, O-R-E.

14 THE CLERK: Thank you. You may be seated.

15 DIRECT EXAMINATION

16 BY MR. KAVACAS:

17 Q. Good morning, Brandon.

18 A. Good morning, how are you?

19 Q. Fine. How are you?

20 A. Pretty well.

21 Q. Good. I'm going to pour you a little cup of
22 water here.

23 A. Thank you.

24 Q. All right, Brandon, I'm going to be asking you
25 questions from back here in order for you to keep your

1 voice up. Speak clearly, because if I can hear you then
2 it's likely the jurors can hear you too; okay?

3 A. Okay.

4 Q. All right. Brandon, how old are you?

5 A. 18 years old.

6 Q. And when's your birthday?

7 A. April 15th, 1994.

8 Q. Where do you live?

9 A. Lebanon, New Hampshire.

10 Q. Who do you live in Lebanon, New Hampshire
11 with?

12 A. With some friends that I know.

13 Q. And do you work?

14 A. I do.

15 Q. Where?

16 A. Price Chopper.

17 Q. What's Price Chopper?

18 A. It's a supermarket.

19 Q. What do you do at Price Chopper?

20 A. I work in the produce department.

21 Q. Is this a full time or part time job?

22 A. Part time currently.

23 Q. Part time currently you said?

24 A. They said they have a full-time opportunity
25 coming up.

1 Q. And where did you grow up?

2 A. Merrimack, New Hampshire.

3 Q. Where did you go to high school?

4 A. Merrimack High School.

5 Q. When did you graduate from Merrimack High
6 School?

7 A. June 9 of 2012.

8 Q. So just this past June?

9 A. Correct.

10 Q. Do you have any further formal education after
11 high school?

12 A. I do not.

13 Q. Brandon, do you know the defendant?

14 A. I do.

15 Q. How long have you known her?

16 A. Since July of 2012.

17 Q. Okay. I'm going to ask you if you see her in
18 the courtroom, to point her out and describe what she's
19 wearing, please?

20 A. She's sitting over there in a pink shirt and a
21 black jacket.

22 Q. Do you know the defendant's daughter?

23 A. I do.

24 Q. Brandon, let me advise you that for purposes
25 of this trial we're referring to the defendant's

1 daughter as R.B., okay. Do you understand that?

2 A. I do.

3 Q. And how long have you known R.B.?

4 A. Almost as long as I've known the defendant.

5 Q. So you met the defendant before you met R.B.?

6 A. Correct.

7 Q. How did you meet the defendant?

8 A. I had been at my friend's house and I was
9 looking online at Craig's List and I started looking
10 through the personal ads, and I responded to one that
11 Lisa had posted.

12 Q. Okay. Brandon, I know you're probably a
13 little bit nervous, but I'm going to ask you to slow
14 down your pace of speech, okay. We have a stenographer
15 whose fingers are burning because you're talking to
16 fast, all right?

17 A. Yup.

18 Q. So you say you were at a friend's house, you
19 were a looking at Craig's List. What's Craig's List?

20 A. It's a site that you can make sales and post
21 other classified ads.

22 Q. And what section of Craig's List were you
23 looking at?

24 A. I was looking in the personal section.

25 Q. And what did you see?

1 A. I had seen one that said two girls looking to
2 party, 18, 33.

3 Q. What did you do when you saw that ad?

4 A. I read it and I responded to it.

5 Q. How did you respond to it?

6 A. Through e-mail.

7 Q. Okay. And did you receive a return response?

8 A. I did.

9 Q. And what happened from there?

10 A. From there we had agreed to meet, and I had
11 gone over to her house within a few days.

12 Q. Okay. Well, let me ask you, before you
13 actually went over, when you say to her house, whose
14 house?

15 A. Lisa's house.

16 Q. Okay. Before you went to the defendant's
17 house, did you just exchange two e-mails?

18 A. No. We exchanged a few e-mails and then
19 texted.

20 Q. Did you exchange anything else over the
21 Internet?

22 A. Pictures of ourselves.

23 Q. I'm sorry?

24 A. Pictures of ourselves.

25 Q. All right. Now, let's go to the time when you

1 went to the defendant's house. What happened?

2 A. I had gone to the house and I met the
3 defendant and she introduced herself and allowed me into
4 the house.

5 Q. Do you remember when that was?

6 A. Some time in July.

7 Q. Okay. So you responded to an ad that said two
8 girls, 18 and 33, looking to party; is that accurate?

9 A. Correct.

10 Q. When you got there, were there two girls, 18
11 and 33, there?

12 A. There was only one.

13 Q. Okay. And that was the defendant?

14 A. Correct.

15 Q. What happened after she let you in her house?

16 A. She showed me the dog and invited me into the
17 living room.

18 Q. Do you remember when you went, was it
19 daylight, was it nighttime?

20 A. It was nighttime.

21 Q. Do you remember what time?

22 A. Probably nine or ten at night.

23 Q. I don't want you to guess, all right? When
24 you say probably, are you saying about or are you
25 guessing?

1 A. I'd say about.

2 Q. About nine or ten? So, what happened when you
3 went in?

4 A. She introduced me to herself, the dog, and
5 invited me into the living room.

6 Q. Okay. And what happened later that evening?

7 A. Later that evening I had sex with her.

8 Q. And what happened after you had sex with her?

9 A. We went to bed in her bedroom and the next
10 morning I had left.

11 Q. Okay. And when you left did the defendant
12 tell you to do anything?

13 A. She invited me to come back another time and
14 to bring a friend with me.

15 Q. Okay. Did you do that?

16 A. I did.

17 Q. When did you return to the defendant's house?

18 A. Within a few days time.

19 Q. And did you return with a friend?

20 A. I did.

21 Q. What happened when you and your friend got to
22 the defendant's house that second time?

23 A. We had gone into the house. She introduced
24 herself. And at that point R.B. was there and she
25 introduced my friend and myself to R.B. as well.

1 Q. Okay. How did the defendant introduce R.B. to
2 you and your friend?

3 A. As a roommate.

4 Q. And how did R.B. address the defendant when
5 you were there that second time, what did she call her?

6 A. Lisa.

7 Q. And she was calling R.B. by her first name?

8 A. Correct.

9 Q. And after these introductions, what happened?

10 A. We had gone inside the living room and we all
11 talked for a little bit.

12 Q. And then what happened a little bit later that
13 night?

14 A. A little bit later on R.B. and I had had sex
15 and my friend had had sex with Lisa.

16 Q. Okay. And did you stay the night again?

17 A. We did.

18 Q. What happened when you left?

19 A. We woke up the next morning and my friend came
20 in and said --

21 Q. I don't need to hear what your friend said.
22 What happened?

23 A. We left the next morning, and she invited me
24 to come back again.

25 Q. Did you come back again?

1 A. I did.

2 Q. All right. Did you bring a friend?

3 A. I did.

4 Q. How many times did you come back with a
5 friend?

6 A. I'd say about five or six.

7 Q. Over what period of time?

8 A. Few weeks.

9 Q. And what would happen when you'd come back
10 with five or six friends over that period of two weeks,
11 what would happen between you?

12 A. The same thing that happened with the first
13 friend. I would have sex with R.B. and they would have
14 sex with Liza.

15 Q. Under the same roof?

16 A. Yes.

17 Q. And eventually what happens after this period
18 of time where you're bringing friends over to the
19 defendant's house?

20 A. Eventually I had moved out of my parents'
21 house and moved into their house.

22 Q. Why did you move out of your parents' house?

23 A. Because my parents and I had had a fight and
24 they gave me the option of leaving or there were set
25 rules that I didn't personally agree with, and they

1 wanted me to give up my full-time job that I had taken,
2 and I didn't want to do that either, so I had chosen to
3 move out.

4 Q. So you and your parents got in a beef. Did
5 they kick you out?

6 A. I wouldn't say they kicked me out. I'd say
7 they gave me the option to leave or to follow the rules
8 that I didn't personally agree with, so I chose the
9 option to leave.

10 Q. Where did you go?

11 A. I had stayed at Lisa and R.B.'s house.

12 Q. When you say I had stayed there, how long?

13 A. It ended up being about two months.

14 Q. Let's go back to the beginning of that two
15 months, all right? When you move in there, do you know
16 the nature of the relationship between the defendant and
17 R.B. when you moved in there?

18 A. Not yet.

19 Q. How did you find that out?

20 A. Lisa had started calling R.B. baby and things
21 of that nature, and at some point R.B. had called Lisa
22 mom.

23 Q. Okay. And how long after you moved in did you
24 notice that?

25 A. Within a couple weeks.

1 Q. When you moved in where were you sleeping?

2 A. On the couch or in one of their beds.

3 Q. Okay. So you would either sleep in the
4 defendant's bed or R.B.'s bed?

5 A. One of those two or on the couch. It would
6 vary night to night.

7 Q. Okay. After you heard them refer to
8 themselves, as you said, baby and mom, what did you do?

9 A. I asked them what was up with that, and they
10 came out and told me they were mother and daughter, not
11 roommates.

12 Q. Now, when you first saw that Craig's List
13 posting that said two girls 18 and 33; right?

14 A. Yes.

15 Q. When you first met the defendant, did you
16 think she was 33?

17 A. I thought she was probably a little older than
18 that.

19 Q. When you first met R.B., did you think she was
20 18?

21 A. I thought she could possibly be 18, yeah.

22 Q. Okay. Did you find out the truth?

23 A. Later on, yes.

24 Q. When you say later on, when?

25 A. It was after I had moved in. Probably two or

1 three weeks before I had moved out.

2 Q. Okay. How did you find out their true ages?

3 A. When it became Lisa's birthday, she told me
4 that she was turning 43, and that was when I found out
5 that she was actually older than 33.

6 Q. Do you remember when that was?

7 A. Some time in August.

8 Q. Okay. So you met in July, some time in August
9 you're living there and she tells you she's 43?

10 A. Correct.

11 Q. How do you find out R.B.'s true age?

12 A. They started talking about high school and
13 eventually going back her freshman year, and then I
14 questioned that, and they came out and told me that R.B.
15 was 14, not 18.

16 Q. Now, while you're living at the defendant's
17 house, are you living there for free?

18 A. I am not.

19 Q. What kind of rent were you paying?

20 A. I was paying cash to the defendant.

21 Q. Where were you working?

22 A. Freudenberg.

23 Q. What's that?

24 A. It's a factory on the airport property that
25 makes bumpers for cars.

1 Q. So after you learned the true nature of their
2 relationship as mother and daughter and after you learn
3 their true ages, did you continue to live there?

4 A. That was when I had started looking for
5 somewhere else to live.

6 Q. Okay, that wasn't my question. My question
7 was, did you continue to live there?

8 A. Yes, I did.

9 Q. Why?

10 A. Because I hadn't had another place to go.

11 Q. Now, you just found out that you had been
12 having sex with a 14-year-old girl; right?

13 A. Yes.

14 Q. Did you continue to have sex with her?

15 A. Yes.

16 Q. Why?

17 A. Because at that point her and I were dating.

18 Q. Dating? What did you do dating?

19 A. We were boyfriend and girlfriend.

20 Q. Okay. What did you do as boyfriend and
21 girlfriend?

22 A. We stayed monogamous and we went on a date
23 once.

24 Q. And were you sleeping in her bedroom now?

25 A. Almost always.

1 Q. Did the defendant know about that to your
2 knowledge?

3 A. Yes.

4 Q. And she permitted it?

5 A. Yes.

6 Q. What did the defendant say about you and her
7 daughter having sex?

8 A. She encouraged it.

9 Q. How did she encourage it?

10 A. There was a day where she had spoken to me
11 personally without R.B. and said R.B. would prefer if
12 you made the moves instead of her all the time.

13 Q. Okay. What else did she say about having sex
14 with R.B.?

15 A. She didn't mind if it happened.

16 Q. Did she say where it should happen?

17 A. One day she had suggested that we have sex on
18 the couch in the living room in front of her.

19 Q. Do you remember when that was?

20 A. I could not tell you exactly when.

21 Q. All right, set the scene for us. Tell us what
22 happened. Tell us where you were, the time of day it
23 was, what happened?

24 A. It was probably -- I would say about 11 in the
25 morning, and she -- Lisa had suggested that we have sex

1 in the living room because we were all sitting in the
2 living room, and she suggested that we have sex on the
3 couch in front of her. And R.B. and I had agreed. And
4 then Lisa had filmed it.

5 Q. Okay. So where were you having sex with R.B.?

6 A. On a two-seater couch in the living room.

7 Q. Okay. And the defendant was right there?

8 A. She was on the other couch in the living room.

9 Q. And you say that she -- you saw her doing
10 what?

11 A. Filming us.

12 Q. Do you know what she was filming you with?

13 A. Her iPhone.

14 Q. And where was she standing as she was filming
15 you and her daughter having sex?

16 A. Behind us.

17 Q. Did she tell you ahead of time that she was
18 going to film you doing it?

19 A. She did not.

20 Q. Was it your idea to do that?

21 A. It was not.

22 Q. All right, Brandon, I'm going to show you a
23 video. Brandon, this video is about one minute long and
24 I'm going to ask you to view it to yourself first. I'm
25 going to bring a laptop up there so you can see it with

1 headphones.

2 A. Okay.

3 Q. You can watch it in its entirety or until you
4 recognize it. And when you recognize it, just tell me.

5 Can you move that microphone for me. Thanks.

6 A. No problem.

7 Q. Let me give you those headphones.

8 (Video being played.)

9 Q. Do you recognize that video?

10 A. I do.

11 Q. Have you seen it before?

12 A. I have.

13 Q. What does that video show?

14 A. It was the video that Lisa had taken of me and
15 R.B. having sex.

16 Q. And where were you and R.B. having sex when
17 the defendant took this video?

18 A. On the two-seater couch in the living room.

19 MR. KAVACAS: Your Honor, at this point I'd
20 ask that the ID be stricken and Exhibit 6 be admitted as
21 a full exhibit and published to the jury.

22 MR. MOIR: No objection.

23 THE COURT: Without objection.

24 MR. KAVACAS: Thank you.

25 (Government's Exhibit 6 admitted.)

1 (Video being played.)

2 Q. BY MR. KACAVAS: Brandon, what do you say on
3 that video? How do you refer to the defendant?

4 A. Mom.

5 Q. Why did you do that?

6 A. It was an inside joke.

7 Q. What was the inside joke, let us in?

8 A. I would just call her mom as a joke and I
9 thought it was funny because at that point I had known
10 they were mother/daughter.

11 Q. Okay. What else do you say on that video?

12 A. Are you still taking a video.

13 Q. You say are you still taking a video. So was
14 she taking a video before this?

15 A. Yes.

16 Q. Of you two?

17 A. Yes.

18 Q. And what else do you say? You say I thought
19 video time was over?

20 A. Yes.

21 Q. And do you hear R.B. speaking on that video?

22 A. Yes.

23 Q. What does she say?

24 A. She says are you still taking a video.

25 Q. And how does the defendant respond to her

1 daughter's question?

2 A. She says no, and then, well, maybe, and
3 laughs.

4 Q. And after you -- I want to play this to point
5 out something in particular, okay.

6 (Video being played.)

7 Q. Okay, that's you on top; right?

8 A. Correct.

9 Q. Who's on the bottom?

10 A. R.B.

11 Q. You see her left hand on your back?

12 A. I do.

13 Q. What's she wearing?

14 A. A purity ring.

15 Q. What's that?

16 A. It's a ring that means that you won't have sex
17 until marriage.

18 Q. How do you know that?

19 A. Because it's a religious thing.

20 Q. And do you know where R.B. got that ring?

21 A. I do.

22 Q. Where?

23 A. In New York.

24 Q. How do you know that?

25 A. Because Lisa had told me she got it for R.B.

1 in New York as a gift.

2 Q. I want to show you some photographs. I'm
3 going to show you this photograph, which is marked
4 Government's Exhibit 7B for identification. Do you
5 recognize what's depicted in that photograph?

6 A. I do.

7 Q. What is it?

8 A. It's the living room of Lisa's house.

9 MR. KAVACAS: Your Honor, at this point I ask
10 the ID be stricken and the exhibit be admitted as a full
11 exhibit and displayed to the jury.

12 MR. MOIR: No objection.

13 THE COURT: Out objection.

14 (Government's Exhibit 7B admitted.)

15 Q. BY MR. KACAVAS: All right, Brandon, what's
16 this show?

17 A. This shows the living room and both couches
18 and how it would normally look.

19 Q. Okay. And when you were having sexual
20 intercourse with R.B., what couch were you on? Just
21 point to it and circle it on that monitor right there.

22 (Witness doing so.)

23 Q. Okay. So where those blue arrows are, that's
24 the two-seater you referred to?

25 A. Correct.

1 Q. And where was the defendant?

2 A. Right about here.

3 Q. Okay. I'm going to show you Exhibit 7C for ID
4 and ask you if you recognize that?

5 A. I do.

6 Q. What is that?

7 A. It is the other side of the living room.

8 Q. Whose house?

9 A. Lisa's house.

10 MR. KAVACAS: Your Honor, I'd ask that the ID
11 be stricken on Exhibit 7C and it be admitted as a full
12 exhibit and displayed to the jury.

13 MR. MOIR: No objection.

14 THE COURT: Without objection.

15 MR. KAVACAS: Thank you.

16 (Government's Exhibit 7C admitted.)

17 Q. BY MR. KACAVAS: Describe for the jurors what
18 this depicts?

19 A. It shows the two-seater couch, the TV, and you
20 can see R.B.'s bedroom door.

21 Q. Okay. Now, in that video we just watched,
22 that TV, was that on?

23 A. Yes, it was.

24 Q. And there was some noise in the background.
25 Where was that noise coming from?

1 A. The TV.

2 Q. I'm showing you what's been marked as
3 Government's Exhibit 7D for ID. Do you recognize that?

4 A. I do.

5 Q. What is that?

6 A. That is Lisa's bedroom.

7 Q. In her house?

8 A. Yes.

9 MR. KAVACAS: Your Honor, I'd ask that the ID
10 be stricken on Government's Exhibit 7D and it be
11 admitted as a full exhibit and displayed for the jury,
12 please.

13 MR. MOIR: No objection.

14 THE COURT: Without objection, it will be
15 admitted.

16 (Government's Exhibit 7D admitted.)

17 Q. BY MR. KACAVAS: Okay, what's that photograph
18 show?

19 A. That shows Lisa's bed and her end table.

20 Q. So that's the defendant's bedroom?

21 A. Yes.

22 Q. All right. I'm showing you what's been marked
23 as Government's Exhibit 7E for ID and ask you if you
24 recognize that?

25 A. I do.

1 Q. What's that?

2 A. That is R.B.'s bedroom.

3 Q. At the defendant's house?

4 A. Yes.

5 MR. KAVACAS: Your Honor, I'd ask that the ID
6 be stricken on Government's Exhibit 7E and it be
7 admitted as a full exhibit and displayed to the jury.

8 MR. MOIR: No objection.

9 THE COURT: Without objection.

10 (Government's Exhibit 7E admitted.)

11 Q. BY MR. KAVACAS: Describe for the jury what's
12 depicted in that photo?

13 A. That shows R.B.'s bedroom.

14 Q. And that's where you stayed most of the time
15 you were living there?

16 A. Correct.

17 Q. And again, how long did you live there?

18 A. About two months.

19 Q. Now, in that two-month time frame did the
20 defendant show you any other videos in which R.B. was
21 having sex with another young man?

22 A. Yes.

23 Q. Tell us about that.

24 A. She had showed me a video of R.B.'s first time
25 having sex.

1 Q. And did she tell you when that took place?

2 A. Yes, she did.

3 Q. When?

4 A. Memorial Day weekend.

5 Q. Where?

6 A. In Canada.

7 Q. Set the scene for us, Brandon, and tell us how
8 she came to show you this video of her daughter having
9 sex with a guy in Canada?

10 A. We were sitting in the living room, myself and
11 R.B. on the two-seater couch and Lisa on the
12 three-seater couch, and she had taken out her laptop and
13 asked if she could show me that video.

14 Q. So you're sitting on the living room couches?

15 A. Correct.

16 Q. And what happens, I'm sorry, I missed the last
17 part of what you said?

18 A. Lisa had taken her laptop out and asked R.B.
19 if she could show me that video.

20 Q. Do you know whether or not R.B. wanted you to
21 see that video?

22 A. She seemed to be very defensive of it and not
23 want me to see it.

24 Q. The defendant showed it to you anyway?

25 A. She eventually convinced R.B. to let me see

1 the video.

2 Q. And what was depicted in that video?

3 A. R.B. having sex with another male.

4 Q. Okay. What was R.B.'s position in that video?

5 A. She was on her hands and knees.

6 Q. Where?

7 A. On either the floor or bed.

8 Q. And did you see anybody else with her?

9 A. There was another guy in the video.

10 Q. What stood out to you about the guy?

11 A. He had blue booties on.

12 Q. Where?

13 A. On his feet.

14 Q. And what did the defendant tell you about that
15 video?

16 A. That he had burned his feet walking on hot
17 coals.

18 Q. Okay, that's what she told you about the blue
19 booties. What did she tell you about the guy in the
20 video?

21 A. About the guy in the video? That he was from
22 Canada and R.B. had met him online through Facebook.

23 Q. And did she say anything about why she went to
24 Canada?

25 A. Yes, she did.

1 Q. What did she say?

2 A. Because they had been drinking one night and
3 they had been intoxicated and planned to go up there.

4 Q. Who had planned to go up there?

5 A. I believe it was Lisa.

6 Q. And who else, who was she going to take with
7 her?

8 A. R.B.

9 Q. And what was the plan?

10 A. The plan was to go up there and meet Kevin.

11 Q. For what purpose?

12 A. To have sex with Kevin.

13 Q. Who said that to you?

14 A. Lisa.

15 Q. And who was going to have sex with Kevin?

16 A. Both R.B. and Lisa.

17 Q. Did the defendant say anything to you about
18 what she wanted to do when R.B. was having sex with
19 Kevin?

20 A. To film it.

21 Q. She said that to you?

22 A. Yes.

23 Q. And do you know whether or not R.B. had ever
24 had sex with a boy before that trip to Canada?

25 A. They said that was her first time having sex.

1 Q. And so the defendant showed you that video?

2 A. Yes.

3 Q. Even though R.B. was a little reluctant to let
4 her do that; right?

5 A. Yes.

6 Q. And did all three of you watch it?

7 A. Yes.

8 Q. So, you said that you lived there for about
9 two months. When did you move in?

10 A. September.

11 Q. So you moved out when?

12 A. I moved out in September.

13 Q. When did you move in?

14 A. Late July.

15 Q. Did anybody else move into the defendant's
16 house before you moved out?

17 A. Yes.

18 Q. Who?

19 A. Rob.

20 Q. Okay, and who is Rob?

21 A. He was a guy that showed up at a party one
22 night and just never left.

23 Q. And how long before you left did he move in?

24 A. About two weeks.

25 Q. And where did he sleep?

1 A. Usually in Lisa's bed.

2 Q. So what caused you to move out of the
3 defendant's house in September?

4 A. The party was getting out of control. The sex
5 was out of control. And she was charging me a lot in
6 rent.

7 Q. So what did you do?

8 A. I went online and started looking for
9 apartments.

10 Q. Okay. And you found one?

11 A. I did. And then I moved into the apartment
12 and out of Lisa's house.

13 Q. All right. And after you moved out of the
14 defendant's house, what did you decide to do?

15 A. I decided to go to the police department and
16 make a report of the fact that I had sex with an
17 underage girl.

18 Q. Why did you do that?

19 A. Because I knew it was wrong and it would be
20 better if I just told them myself than have Lisa or R.B.
21 go there.

22 Q. I'm sorry, can you move that microphone
23 towards you. I can't make out what you just said. Say
24 that again.

25 A. I figured it would be better to tell them

1 myself and tell them the truth than have Lisa or R.B.
2 show up there.

3 Q. Why were you afraid of Lisa or R.B. showing up
4 there?

5 A. Because I had just gotten in a fight with
6 R.B., a small one on Facebook.

7 Q. Now, after you made this report to the
8 Manchester police -- what did you report?

9 A. I reported that I had had sex with an underage
10 girl.

11 Q. And did you report anything else?

12 A. I did. I reported that there was a lot of --

13 Q. No. Did you report seeing anything else?

14 A. Oh, I did. I reported having seen the video
15 of R.B. when she was in Canada.

16 Q. All right. After you made that report to the
17 Manchester police, did you ever return to the
18 defendant's home?

19 A. I did.

20 Q. Why?

21 A. Because my paycheck didn't show up to my new
22 apartment, so I figured it might be there.

23 Q. You had been having it mailed to her home?

24 A. Correct.

25 Q. What happened when you went back to look for

1 your paycheck?

2 A. Lisa told me I need to come into the house
3 because DCYF was on their way over.

4 Q. Do you know what DCYF stands for?

5 A. I do not know exactly what it stands for.

6 Q. Have you heard of the Division of Children,
7 Youth and Families before?

8 A. Yes.

9 Q. Do you know what they do?

10 A. I do.

11 Q. What's your knowledge of what they do?

12 A. They take care of child abuse and things of
13 that nature.

14 Q. And did a representative of DCYF come to the
15 defendant's home when you were there?

16 A. Yes.

17 Q. And what happened?

18 A. She had asked myself and R.B. to leave the
19 room so she could talk to Lisa privately.

20 Q. Who asked you to leave the room?

21 A. The DCYF worker.

22 Q. So she could talk to the defendant?

23 A. Yes.

24 Q. And how long was she with the defendant?

25 A. About 20 minutes.

1 Q. What happened after the DCYF worker left?

2 A. Lisa came out to the back porch and got myself
3 and R.B. and told us that she wasn't supposed to tell us
4 what they talked about, but she did anyway, and she said
5 that she lied about everything and said that nothing
6 happened.

7 Q. She told you that she lied to the DCYF case
8 worker?

9 A. Yes.

10 Q. And that she told her nothing had happened?

11 A. Yes.

12 Q. What else did she tell you?

13 A. She told me that I should go to the police
14 department, withdraw my statements, and take a
15 misdemeanor charge of false reporting.

16 Q. Okay. And did you do that?

17 A. I did.

18 Q. Why?

19 A. No, I did not, I'm sorry. I went to the
20 police department and told them that she had lied to the
21 DCYF worker.

22 Q. How did you get to the police department?

23 A. Lisa had given me a ride there.

24 Q. Do you know why she gave you a ride there?

25 MR. MOIR: Objection, your Honor.

1 THE COURT: Sustained. Lay a foundation,
2 personal knowledge.

3 MR. KAVACAS: Absolutely.

4 Q. Did the defendant tell you why she was driving
5 you have to the Manchester Police Department?

6 A. So I could take back my statements that I had
7 made.

8 THE COURT: Wait, wait. Did she tell you.
9 Answer that one yes or no.

10 A. Yes.

11 Q. What did she tell you was her reason for
12 taking you to the Manchester Police Department?

13 A. So that I could withdraw my statements that I
14 had previously made.

15 Q. And did you do that?

16 A. I did not.

17 Q. What did you in fact do?

18 A. I asked if I could make a report of her lying,
19 and they said to come back later when the original
20 officer that I had spoken to was there.

21 Q. All right. So you report yourself to the
22 Manchester police for having sex with an underage girl;
23 right?

24 A. Yes.

25 Q. Pretty steady sex; right?

1 A. Yes.

2 Q. You're in pretty hot water, aren't you?

3 A. Yes.

4 Q. Have I made any promises to you in exchange
5 for your testimony?

6 A. No, you have not.

7 Q. Who's made a promise to you, if anyone, in
8 exchange for your testimony today?

9 A. The Hillsborough County Attorney's Office.

10 Q. And what's the Hillsborough County Attorney's
11 Office told you?

12 A. They said that as long as I tell the truth,
13 then I won't be charged with anything.

14 Q. And did they tell you that in writing?

15 A. They did.

16 Q. Okay. Have you read that letter?

17 A. I have.

18 Q. Do you understand it?

19 A. I do.

20 Q. You understand your obligation to tell the
21 truth?

22 A. Yes, I do.

23 MR. KAVACAS: Nothing further.

24 THE COURT: Thank you. About how long do you
25 anticipate cross?

1 MR. MOIR: I don't know what time the court
2 wants to break for lunch, but it's going to be fairly
3 lengthy.

4 THE COURT: Okay, well, then we should break
5 now for lunch. So we will break, members of the jury.
6 We'll take a lunch break until 1:30, we'll resume at
7 1:30.

8 If counsel could remain, please.

9 (Jury exited the courtroom.)

10 THE COURT: Be seated, please. Have you got
11 your jury instructions yet?

12 MS. FITZGIBBON: No, your Honor. It's my
13 intention to do them at the break and --

14 THE COURT: All right, well, do a good job of
15 them, okay? I want to talk to you about a few issues
16 that, as I'm starting to put the instructions together,
17 Count Two, sexual exploitation of children, that
18 count -- excuse me, let's start with Count One. Count
19 One is the transportation count?

20 MS. FITZGIBBON: Yes, your Honor.

21 THE COURT: Okay. The indictment alleges
22 transportation in interstate commerce, okay? It doesn't
23 allege transportation in foreign commerce. It alleges
24 transportation in interstate commerce. How are you
25 going to prove that she was transported in interstate

1 commerce? Have you thought that one through?

2 MS. FITZGIBBON: Yes, your Honor. The
3 testimony will be from people that Lisa Biron told them
4 that they flew from New Hampshire to Buffalo.

5 THE COURT: They flew? Okay.

6 MS. FITZGIBBON: Yes, your Honor.

7 THE COURT: So they flew to Buffalo. So they
8 crossed the boundaries from -- okay, good, so there will
9 be testimony on that fact.

10 MR. KAVACAS: There was some.

11 MS. FITZGIBBON: And there has been already
12 from Kevin Watson.

13 THE COURT: He said Lisa told them they flew,
14 okay, good. Sorry, I missed that, okay.

15 Second, the way the statute is worded, I'm
16 assuming that the issue is whether the transportation is
17 for the purpose of -- that the transportation is with
18 the intent that the individual engage in any sexual
19 activity for which any person can be charged with a
20 criminal offense. Is it your view that that statute is
21 transportation for the purpose of engaging in conduct
22 which qualifies as a criminal offense under the United
23 States law, even if the person is transported to a
24 foreign country to engage in conduct which is, say,
25 unlawful under United States law and lawful under

1 Canadian law?

2 MS. FITZGIBBON: Yes, your Honor.

3 THE COURT: Okay. I think that's the way the
4 statute is worded, but I would appreciate if you would
5 find some case law support for that proposition. So the
6 intention is to engage in activities which are lawful
7 under United States law, not the law of Canada. That's
8 what -- because the actual crime, the completed offense,
9 one could argue that there was a conspiracy that was
10 committed in the United States.

11 MS. FITZGIBBON: Yes, your Honor.

12 THE COURT: But the ultimate transportation
13 with intent to engage in activity was to transport to
14 Canada to engage in sexual activity. But I don't need
15 to get into a definition of whether that activity was
16 lawful or unlawful under Canadian law in order to have
17 the crime proved. That's what I'm trying to get at.

18 MS. FITZGIBBON: And your Honor, the purpose
19 was to, with the intent that such person engage in
20 sexual activity, production of child pornography, which
21 as 2427 says, the term sexual activity for which any
22 person can be charged with a criminal offense includes
23 the production of child pornography.

24 THE COURT: And I guess I'm not being clear
25 enough about what I'm saying. One could act with that

1 purpose, but suppose one were to transport somebody to a
2 country, country X, that does not make the production of
3 child pornography a crime. Is it still an offense under
4 this statute to transport in interstate commerce for the
5 purpose of engaging in activity which is lawful in the
6 place where you're engaging in it but unlawful under
7 United States law? I think the answer to that question
8 is yes, that seems to be the way the statute is phrased,
9 but I'm simply suggesting that it would be helpful to me
10 if you would try to identify any case law that would
11 support that proposition so that I can clearly give the
12 instruction because I doubt I'm going to be requested to
13 give any instructions about whether the behavior was
14 lawful or unlawful under Canadian law.

15 MS. FITZGIBBON: Yes, your Honor, understood.

16 THE COURT: Okay. The second question I have
17 concerns the Count Two. The statute in Count Two is a
18 fairly complicated poorly worded gigantic paragraph-long
19 sentence with many commas and clauses and so forth, but
20 I understand you've charged the indictment in the
21 conjunctive, which is a common prosecutorial practice,
22 and identifies alternative theories of liability in the
23 conjunctive. Under First Circuit case law when you
24 charge in the conjunctive, you can be convicted under a
25 disjunctive theory, so if there are three ways one can

1 commit the crime, and you allege as you've done here,
2 they've done A, B and C, the judge can instruct that you
3 can find guilt based on A, B or C as long as you
4 unanimously agree on A, B or C beyond a reasonable
5 doubt. Is that your understanding?

6 MS. FITZGIBBON: Yes, your Honor.

7 THE COURT: Okay. Will there be evidence that
8 the depictions here that comprise Counts Two through
9 Seven were themselves transported in interstate
10 commerce?

11 MS. FITZGIBBON: With respect to Counts Two
12 through Six, yes, your Honor, those were produced in
13 Canada.

14 THE COURT: Oh, those are all -- Two through
15 Six were all Canadian?

16 MS. FITZGIBBON: Two through Five, I'm sorry.

17 THE COURT: Two through Five.

18 MS. FITZGIBBON: Two through Five, your Honor.

19 THE COURT: So Two through Five the evidence
20 will be they are produced in Canada, they flew through
21 Buffalo, therefore they took them with them and
22 transmitted them in interstate commerce.

23 MS. FITZGIBBON: And they were retrieved here
24 in Manchester, New Hampshire, your Honor, yes.

25 THE COURT: Right. Because one could drive

1 from New Hampshire to Canada without engaging in
2 interstate commerce, but you're saying the evidence will
3 be that they flew through Buffalo and therefore they
4 would have necessarily, from going from Buffalo to New
5 Hampshire, have transported them in interstate commerce,
6 or she would have, the defendant.

7 MS. FITZGIBBON: Yes, your Honor.

8 THE COURT: Okay. And what about Six and
9 Seven?

10 MS. FITZGIBBON: Those, your Honor, the
11 testimony will be that those images were produced using
12 materials which traveled in interstate or foreign
13 commerce.

14 THE COURT: Okay. So that one you won't be
15 trying to prove transportation in interstate or foreign
16 commerce. You're going to prove produced using
17 materials that had been mailed, shipped or transported
18 in interstate commerce.

19 MS. FITZGIBBON: That's correct, your Honor.

20 THE COURT: And the proof will be that was
21 done on an iPhone.

22 MS. FITZGIBBON: iPhone and a computer
23 component.

24 THE COURT: And you have somebody coming in
25 saying those computer components are not produced in New

1 Hampshire.

2 MS. FITZGIBBON: There will be the actual
3 physical exhibits, your Honor, that have the made in
4 sticker made in the Philippines, made in China.

5 THE COURT: Okay, so they'll bear stickers
6 that will identify, so it will be self-identifying
7 having not been produced here. Okay, I haven't gotten
8 to the third count yet.

9 So you understand the questions that I'm
10 asking and the views I'm expressing about the statute.
11 Do you think I am misunderstanding the way the statutes
12 work in any way?

13 MR. MOIR: Obviously I've submitted my
14 proposed instructions and I think that fairly outlines
15 the law that should be given.

16 THE COURT: I know, but I've explained to you
17 the way I think the law works, and it's incumbent upon
18 you as an officer of the court to tell me now if you
19 think that I'm misunderstanding the way the law works in
20 any way, in a way that is to the detriment of your
21 client, I'm asking you to tell me now so I can do some
22 more reading and thinking about it. Is there -- have I
23 expressed any view of the law of the way these statutes
24 work that is a misunderstanding from your view in the
25 way the law works to the extent that it works to the

1 detriment of your client.

2 MR. MOIR: At this point I don't see anything
3 the court has misconstrued.

4 THE COURT: Okay. If you do, bring it to my
5 attention as soon as you do because I'm trying to draft
6 these instructions, and I want to get them right, and I
7 don't want to have last minute delays because somebody
8 comes up and says, oh, that's not the way this works, it
9 works some other way. So please think about what I'm
10 saying here. I've got your instructions. I'm keeping
11 them in mind, of course. My job is to run the trial and
12 get the instructions on the law right, and I want to do
13 my job well and I need you as officers of the court to
14 both assist me in doing that job, okay? So get those
15 instructions in to me as soon as you can.

16 (Luncheon recess taken.)

17 THE COURT: Take a seat, sir.

18 CROSS-EXAMINATION

19 BY MR. MOIR:

20 Q. Good afternoon, Mr. Ore. Is it okay if I call
21 you Brandon?

22 A. That's fine.

23 Q. Okay. I'm Jim Moir. I don't think we've met
24 before.

25 All right, I want to I guess jump straight off

1 to something I believe you said on direct examination.

2 I took some notes, they may not be right, so. You
3 talked about what, was it Lisa or R.B., which one of
4 them talked about this plan they had on going to Canada?

5 A. It was Lisa.

6 Q. Okay, it was never R.B.?

7 A. R.B. had joined into the conversation later.

8 Q. So this is the single time it was talked
9 about; right?

10 A. It was talked about on a couple of different
11 occasions.

12 Q. As far as the plan?

13 A. As far as the plan of how they chose to go
14 there, yes.

15 Q. Was talked about on multiple occasions?

16 A. Yes.

17 Q. You told the jury that the plan was to go to
18 meet Kevin; right?

19 A. Yes.

20 Q. Of course they are talking about something
21 that happened months earlier. Right?

22 A. Yes.

23 Q. Okay. Said okay, we had the planned, and our
24 plan was to go meet Kevin, and we were going to have sex
25 with Kevin. Right?

1 A. They had said they were drinking and they had
2 planned the trip to Canada to go see Kevin.

3 Q. Right. They had planned a trip and the plan
4 was to have sex with him; right?

5 A. Yes.

6 Q. And the plan was to make a video of it; right?

7 A. I do not know if there was a plan to make a
8 video.

9 Q. Okay, that's what I want to be sure because
10 they never said that, did they, either of them?

11 A. Not to my knowledge.

12 Q. In fact, they talked about how their video was
13 made. You obviously saw it; right?

14 A. Yes.

15 Q. But neither of them at any point said to you,
16 you know, we wanted to go to Canada to have sex with
17 Kevin and produce a video?

18 A. They had never said they wanted to produce a
19 video.

20 Q. Okay. You have been interviewed many times;
21 right?

22 A. Yes.

23 Q. I think the count I have is 11 times. Does
24 that sound about right?

25 A. That sounds a little more than what it was.

1 Q. Okay. I mean, just going through it real
2 quickly. I think Officer Powers, you talked to him on
3 September 28th, Manchester PD?

4 A. Some time around September. I don't know the
5 exact date.

6 Q. Then you talked to him about four days later
7 again?

8 A. Yes.

9 Q. Okay. And then you talked to Detective Nanan,
10 it would be October 6th or after that?

11 A. Yes.

12 Q. And then you talked to Detective Nanan another
13 time?

14 A. Yes.

15 Q. And then you met with Agent Gibeley the first
16 time later in October?

17 A. Yes.

18 Q. Okay. And then you went on and had another
19 meeting with him on the 27th?

20 A. Yes.

21 Q. Another meeting with him on November 17th?

22 A. Yes.

23 Q. Another meeting with him on November 19th?

24 A. I believe so.

25 Q. Another meeting with him on December 11th?

1 A. I --

2 Q. I can show you if you like.

3 A. If you'd like to show me, that would be all
4 right.

5 Q. Sure, let me pull it out.

6 MR. MOIR: Can I approach your Honor?

7 THE COURT: Pardon me?

8 MR. MOIR: Can I approach?

9 THE COURT: Yes.

10 MR. MOIR: Thank you.

11 Q. Let me see. I think I said to December 11th,
12 you agreed. There's number nine. Short reports?

13 A. (Nods head affirmatively.)

14 Q. Just meeting him; right?

15 A. Yes.

16 Q. And then the tenth time would have been I
17 guess December 22nd. That's the meeting you had with
18 the U.S. Attorney?

19 A. Yes.

20 Q. Okay. And finally number 11 was on, what's
21 the date, at night?

22 A. I believe so, yes.

23 Q. On the 5th; is that correct?

24 A. Yes.

25 Q. I counted 11. Sound about right to you?

1 A. Yes.

2 Q. Okay. Now, you indicated that you first met
3 Lisa in July; right?

4 A. Yes.

5 Q. Okay. And you indicated that you got out
6 there, she was there alone; right?

7 A. Yes.

8 Q. And you had sex with her?

9 A. Yes.

10 Q. And then she said, hey, come on back, bring a
11 friend, something like that; right?

12 A. Yes.

13 Q. Okay. And the first time you went you had no
14 plan to go with a friend; right?

15 A. Correct.

16 Q. You just went alone; right?

17 A. Yes.

18 Q. And you didn't even talk about bringing a
19 friend; right?

20 A. No.

21 Q. That never came up?

22 A. No.

23 Q. It was you going alone and you thought there
24 was going to be two women; right?

25 A. No.

1 Q. You thought there was only one woman there?

2 A. Yes.

3 Q. Okay. Now, because I know that you actually
4 printed off some of your, I guess they would be text
5 messages, that you had between you and Lisa from that
6 same day. Do you recall that?

7 A. I only remember printing off e-mails.

8 Q. If I had can approach, your Honor?

9 THE COURT: Yes.

10 Q. I don't know if you've ever seen these before.

11 A. Yes, those are the e-mails.

12 Q. Okay. Did you print them off?

13 A. I did.

14 Q. Okay. And you brought them over to Agent
15 Gibeley?

16 A. Detective Nanan, believe

17 Q. Detective Nanan at the beginning. And do you
18 recall saying this: I'm 18 and I have a friend in his
19 twenties and we wouldn't mind partying and having a
20 little fun with you girls if you're up with it?

21 A. That was in the original.

22 Q. Okay. So you're the guy that brought up two
23 people; right?

24 A. Yes.

25 Q. Okay. I mean, that wasn't injected in this

1 conversation by anybody but you; right?

2 A. Yes.

3 Q. Okay, going back to it. You meet Lisa, you
4 have sex with her, you come back the next time. At this
5 point you meet R.B.; right?

6 A. Yes.

7 Q. And you have sex with her that night; right?

8 A. Yes.

9 Q. Okay. And pretty soon you eventually become
10 her boyfriend; right?

11 A. Eventually, yes.

12 Q. I mean, it didn't take long; right?

13 A. Not too long, no.

14 Q. Right. I mean, basically it was a week or
15 two; right?

16 A. It might have been a little bit longer, but
17 somewhere in that time frame.

18 Q. But pretty quickly you considered her your
19 girlfriend; right?

20 A. Yes.

21 Q. Okay. Now, let me ask you about this. I mean

22 --

23 THE COURT: Counsel, could you just clarify.
24 When you say her, her boyfriend, who?

25 Q. Her, would be R.B.'s boyfriend. Okay. Not

1 Lisa's boyfriend but R.B.'s; right?

2 A. Correct.

3 Q. The 14-year-old. Okay. Obviously you said
4 you didn't know she was 14 at that time?

5 A. Yes.

6 Q. Okay. Now, obviously you engaged in sex with
7 her; right?

8 A. Yes.

9 Q. And when you did that, did you want to have
10 sex with her?

11 A. Yes.

12 Q. And did it appear that she wanted to have sex
13 with you?

14 A. Yes.

15 Q. I mean, you didn't force her; right?

16 A. No.

17 Q. And you didn't make her any promises?

18 A. No.

19 Q. And you didn't induce her in any way to have
20 sex; right?

21 A. No.

22 Q. This is purely a mutual thing; right?

23 A. Yes.

24 Q. And over the course of the time you lived in
25 that house with her, I mean, and it's hard to say, but

1 how many times do you think you had sex with her?

2 A. I'd say a lot, I mean.

3 Q. I mean a lot; right?

4 A. Yeah.

5 Q. I mean, you're a young guy, right, and she
6 wanted to have sex and you wanted to have sex; right?

7 A. Yes.

8 Q. And you did it quite a few times a week;
9 right?

10 A. Yes.

11 Q. And during that time, I mean, you never forced
12 her to have sex; right?

13 A. No.

14 Q. And she always wanted to have sex with you;
15 right?

16 A. Yes.

17 Q. And you'd agree with me that Lisa didn't force
18 you to have sex; right?

19 A. No.

20 Q. And she didn't force R.B. to have sex; right?

21 A. No.

22 Q. You talk about this one point when Lisa
23 encouraged you; right?

24 A. Yes.

25 Q. I mean, let me get that straight. She told

1 you that apparently R.B. said you weren't initiating it;
2 right?

3 A. Yes, sir.

4 Q. She always had to initiate having sex with
5 you; right?

6 A. Yes.

7 Q. And so she's basically saying hey, you know,
8 why don't you initiate with her too; right?

9 A. Correct.

10 Q. I mean, that's what we're talking about with
11 encouraging; right?

12 A. Yes.

13 Q. I mean, she didn't say you have to have sex
14 with her; right?

15 A. No.

16 Q. Nothing like that?

17 A. No.

18 Q. Because she was your girlfriend; right?

19 A. Yes.

20 Q. And you're dealing with the girlfriend's
21 mother.

22 Now, you lived there for a good, basically two
23 months; right?

24 A. Yes.

25 Q. Approximately. And during those two months, I

1 mean, there's only the three of you living there; right?

2 A. Until the last couple weeks I was there.

3 Q. And then this other gentleman came there;
4 right?

5 A. Yes.

6 Q. Do you know this other guy?

7 A. I only knew him from when I was living there.

8 Q. Okay. And but he was, of the people there, I
9 mean, you were pretty close to these two women; right?

10 A. Yes.

11 Q. This woman and girl. I mean you guys talked
12 about a lot; right?

13 A. Yes.

14 Q. You talked basically about everything, you
15 were like family; right?

16 A. Almost. Kind of.

17 Q. Almost, yeah. I mean you even had a joke
18 about calling her mom; right?

19 A. Yeah.

20 Q. But I mean, it was sort of like family, so not
21 only were you intimate having sex, but you were also
22 intimate in their personal lives; right?

23 A. To an extent, yes.

24 Q. I mean, to a big extent, right, because this
25 is your girlfriend?

1 A. Yes.

2 Q. You would talk about lots of things?

3 A. Yes.

4 Q. I mean, when this other guy moved in later on,
5 he was no where near as close, was he?

6 A. No.

7 Q. Because he's sort of a weird guy; isn't he?

8 A. Kind of.

9 Q. Kind of, yeah, I think we'll see him shortly.
10 Okay. But he was not like you were with these people;
11 right?

12 A. No.

13 Q. And you felt, you know, I suppose that you
14 could confide in them?

15 A. I wouldn't say I could confide in him, no.

16 Q. Not him, I'm talking about R.B.?

17 A. Yes.

18 Q. I mean, she's your girlfriend, and you could
19 actually confide in Lisa as well; right?

20 A. Yes.

21 Q. And they confided in you?

22 A. Yes.

23 Q. I mean, they told you things about like going
24 to Canada; right?

25 A. Yes.

1 Q. And, you know, now, you saw one video from
2 Canada; right?

3 A. Yes.

4 Q. I mean, you heard that there's a number of
5 other ones?

6 A. I have not heard that.

7 Q. Okay. The jury has already seen them today.
8 There's a number of others from Canada. You were only
9 shown one; right?

10 A. Yes.

11 Q. And that one was shown to you because there
12 was that funny noise that they wanted to show you;
13 right?

14 A. Yes.

15 Q. And that was the purpose of showing you;
16 right?

17 A. Yes.

18 Q. And they all were laughing; right?

19 A. R.B. was embarrassed, but Lisa was laughing.

20 Q. And you laughed too?

21 A. Yeah.

22 Q. Yeah. Right. I mean, the thing was done
23 basically as a joke; right?

24 A. Yeah.

25 Q. And do you recall that video clip being pretty

1 short; right?

2 A. It was pretty short, yes.

3 Q. It was not like a big porno video, it was a
4 little short thing; right?

5 A. Yes.

6 Q. During the time you were living in that house,
7 I mean, there were -- obviously you know that Lisa had a
8 camera; right?

9 A. Yes.

10 Q. And she had an iPhone; right?

11 A. Yes.

12 Q. In fact, there were a few cameras lying
13 around, weren't there?

14 A. Yes.

15 Q. And Lisa took a lot of pictures, didn't she?

16 A. Yes.

17 Q. I mean, of lots of things; right?

18 A. Yes.

19 Q. Including apparently you and R.B. having sex;
20 right?

21 A. Yes.

22 Q. But also things like you wrestling in the
23 backyard?

24 A. Yes.

25 Q. And the dog Gunner?

1 A. Yes.

2 Q. And she was always snapping pictures; right?

3 A. Yes.

4 Q. And always taking videos; right?

5 A. Correct.

6 Q. Okay. A couple of things. I'll move on. We
7 have heard, you know, something about there was a lot of
8 pot smoking and drinking; right?

9 A. Yes.

10 Q. In that house. It was pretty routine; right?

11 A. Yes.

12 Q. And everyone there was doing it; right?

13 A. Yes.

14 Q. And I think that when you were interviewed, in
15 one of your interviews you basically told the
16 interviewer, I think it was Agent Gibeley, that you were
17 pretty much wasted; right?

18 A. At times, yes.

19 Q. A lot of times; right?

20 A. To some extent. I mean, there was a lot more
21 pot smoking than drinking.

22 Q. I'm sorry?

23 A. There was a lot more pot smoking than
24 drinking.

25 Q. Okay, okay. But that was just part of being

1 there; right?

2 A. Yes.

3 Q. Everyone was doing it. And I guess finally my
4 only other question is I know there is some talk about
5 this, about having, being granted immunity; right?

6 A. Yes.

7 Q. And I mean obviously you were potentially
8 facing charges; right?

9 A. Yes.

10 Q. And nobody is going to prosecute you; right?

11 A. Yes.

12 Q. Okay. And that's the agreement, that's been
13 the agreement for a while; right?

14 A. I actually only received that letter about a
15 week ago.

16 Q. Okay, but the letter was written some time
17 before that?

18 A. I don't know when that was written.

19 Q. I did have one other question if I can just
20 find it here. No, I think that's actually it. Thank
21 you very much.

22 THE COURT: Thank you. Any redirect?

23 MR. KAVACAS: Very brief, your Honor.

24 REDIRECT EXAMINATION

25 BY MR. KAVACAS:

1 Q. Brandon, the defense lawyer asked you
2 questions about your e-mail correspondence with the
3 defendant; right?

4 A. Yes.

5 Q. And he showed you I believe this e-mail on
6 page 159, counsel, where it says I'm 18 and I have a
7 friend in his twenties?

8 A. Yes.

9 Q. And he talked about you being the first one to
10 raise the notion of having two people come over; right?

11 A. Yes.

12 Q. When you responded to the Craig's List ad that
13 you testified the defendant posted, what was the ad,
14 what did it say?

15 A. Two girls looking to party.

16 Q. Okay. And then on page 158, counsel, this
17 e-mail correspondence continues. Just read that and
18 tell me if you recognize that?

19 A. I do recognize that.

20 Q. Who's that from?

21 A. Lisa.

22 Q. To who?

23 A. Myself.

24 Q. Is it in that same e-mail conversation?

25 A. Yes, it is.

1 Q. And what does the defendant say to you in that
2 e-mail conversation?

3 A. She's going to be home alone tonight.

4 Q. Exactly what does it say?

5 A. Hey, I'm home alone tonight. Might want to
6 hang out, though.

7 Q. Is that the night you met her?

8 A. Yes.

9 Q. The defense lawyer asked you some questions
10 about you wrestling in the backyard?

11 A. Yes.

12 Q. Who were you wrestling with?

13 A. My friend Brad.

14 Q. Was he one of the friends you talked about in
15 your direct testimony when you brought friends over to
16 the defendant's house?

17 A. Yes.

18 Q. One final series of questions. You've
19 indicated that the defendant didn't tell you that they
20 were going to Canada for the specific purpose of
21 creating a video; right?

22 A. Correct.

23 Q. She showed you a video that she created in
24 Canada?

25 A. Yes.

1 Q. Do you remember hearing anything in the
2 background?

3 A. Yes.

4 Q. What did you hear?

5 A. A song.

6 Q. What was the song?

7 A. Half Naked and Almost Famous.

8 Q. Did the defendant tell you anything about why
9 she played that song?

10 A. Because it was R.B.'s favorite song.

11 MR. KAVACAS: Nothing further.

12 THE COURT: Thank you, sir, you can step down.
13 Call your next witness, please.

14 MS. FITZGIBBON: Yes, your Honor, the
15 government calls Robert Hardy.

16 THE CLERK: Stand and raise your right hand.

17 ROBERT HARDY

18 having been duly sworn, testified as follows:

19 THE CLERK: Would you please state your name
20 and spell your last name for the record.

21 THE WITNESS: Robert Hardy, H-A-R-D-Y.

22 THE CLERK: Thank you. You can be seated.

23 DIRECT EXAMINATION

24 BY MS. FITZGIBBON:

25 Q. Good afternoon, Mr. Hardy.

1 A. How you doing?

2 Q. I'm going to stand back here, okay, for the
3 purpose of keeping my voice up, and if you keep your
4 voice up then the jury will be able to hear everything
5 you say, okay? It's important that you answer yes or no
6 or answer verbally and not shake your head because we
7 have a court reporter right here who is taking
8 everything down; okay?

9 A. Okay.

10 Q. Make sure to keep your voice up and also try
11 not to speak too, too fast, and I will too because I
12 tend to talk fast, and she will get everything down;
13 okay?

14 A. Yup.

15 Q. Thanks. Mr. Hardy, where are you from?

16 A. New Hampshire.

17 Q. Okay, where in New Hampshire?

18 A. Merrimack.

19 THE COURT: Would you slide in a little bit
20 because your voice is a little soft. Thank you.

21 Q. How old are you?

22 A. Twenty-five

23 Q. What do you do?

24 A. For work?

25 Q. Yes.

1 A. Landscaping.

2 Q. And do you live in Merrimack now?

3 A. Yes.

4 Q. Do you know Lisa Biron?

5 A. Yes.

6 Q. And do you see Lisa Biron in the courtroom

7 today?

8 A. Yes.

9 Q. And could you indicate where she is, please?

10 A. Right there.

11 Q. And what's she wearing?

12 A. Blue coat.

13 Q. Could it be a black coat?

14 A. I'm sorry, black.

15 Q. How did you meet Lisa Biron?

16 A. At a party.

17 Q. Where was the party?

18 A. At her house.

19 Q. And when was it?

20 A. I --

21 Q. Roughly. You don't have to give me the exact

22 dates.

23 A. I believe November maybe or before then.

24 Q. Of -- are you talking about 2012?

25 A. Yes.

1 Q. And do you remember was it summertime or
2 wintertime when you met her?

3 A. I think towards the end of summer.

4 Q. Okay, of 2012?

5 A. Yes.

6 Q. And you said it was at a party at her house?

7 A. Yes.

8 Q. Who was at the party?

9 A. A few people. Brandon was there, a kid Josh
10 was there, a kid Jacob was there, R.B. was there.

11 Q. Okay. Now, you and I, when you say R.B., are
12 you referring to the defendant's daughter?

13 A. Yes.

14 Q. The first time you were at this party you met
15 a young girl you're referring to as R.B.; right?

16 A. Yes.

17 Q. So she was at the party and you named some
18 other, the individuals you named, did you just name
19 various men that were at the party?

20 A. Yes.

21 Q. Were there any women at that party?

22 A. Lisa and her daughter was there.

23 Q. R.B. Any other females?

24 A. No.

25 Q. And how late did that party last?

1 A. Two, 3 a.m.

2 Q. And did you leave, did the party end?

3 A. Yes.

4 Q. And did you go back to --

5 A. Yes.

6 Q. When did you go back?

7 A. Roughly around 6 a.m. I returned.

8 Q. And so on the same continuing day of the

9 party?

10 A. Yes, ma'am.

11 Q. And after you went back, how long did you stay

12 there?

13 A. The whole day.

14 Q. Did there come a time, did you then leave

15 after that day?

16 A. I stayed there for a while.

17 Q. Okay. Did you move in and start living there?

18 A. Yes.

19 Q. On the night of the party you mentioned

20 Brandon was there. Is that Brandon Ore?

21 A. Yes.

22 Q. Who did you have an understanding Brandon Ore

23 was?

24 A. Josh and Jacob's friend.

25 Q. Okay. And did you have any knowledge of his

1 relationship to Lisa or R.B.?

2 A. It was R.B.'s boyfriend.

3 Q. At some point did you have sexual relations
4 with the defendant, with Lisa Biron?

5 A. Yes.

6 Q. When was the first time you had sex with Lisa
7 Biron?

8 A. That night.

9 Q. That first night at the party?

10 A. Yes.

11 Q. You stated you basically then started living
12 there. Did you continue a sexual relationship with Lisa
13 Biron?

14 A. Yes, ma'am.

15 Q. During the time that you were living there,
16 did R.B. continue to reside there?

17 A. Yes, ma'am.

18 Q. Did Lisa -- excuse me, did Brandon Ore
19 continue to reside there?

20 A. Yes.

21 Q. And were you aware, did they have a sexual
22 relationship?

23 A. Yes.

24 Q. Did you personally witness that sexual
25 relationship?

1 A. Yes.

2 MR. MOIR: Your Honor, these questions have
3 all been leading.

4 THE COURT: Try to ask non-leading questions.

5 Q. After that first night when you lived there,
6 were there other parties that took place in that house?

7 A. Yes.

8 Q. How often would you say parties happened at
9 that house?

10 A. It happened a couple times during the week and
11 on the weekends.

12 Q. Who would generally be at the party?

13 A. Lisa, her daughter and mostly guys. Brandon
14 was there, Josh was there, and Jacob.

15 Q. These men that you're referencing, are they
16 all men about your age?

17 A. Younger.

18 Q. When you were in the defendant's house, were
19 there ever any other females aside from Lisa Biron and
20 R.B. present at a party in that house?

21 A. No.

22 Q. Do you know why, do you personally know why
23 there were never other women in that house?

24 MR. MOIR: Objection, your Honor.

25 THE COURT: Sustained. Show personal

1 knowledge for what they are going to testify about.

2 MR. MOIR: I guess my other point is relevance
3 to a lot of these questions.

4 THE COURT: All right, come up to sidebar, the
5 relevance isn't apparent to me.

6 MR. MOIR: Thank you.

7 AT SIDEBAR

8 MS. FITZGIBBON: Your Honor, it's only one
9 more question and it's done for the purpose of
10 identification of the final exhibit. There are a number
11 of ways that even though you can't see R.B. in that
12 final video we are going to identify as her, I expect
13 him to testify --

14 THE COURT: What video is it?

15 MS. FITZGIBBON: That's exhibit --

16 THE COURT: Have you shown it yet?

17 MS. FITZGIBBON: No, it's coming up, your
18 Honor.

19 THE COURT: So you're going to show another --

20 MS. FITZGIBBON: One more video.

21 THE COURT: And are there other women in the
22 video?

23 MS. FITZGIBBON: It's the one, your Honor, of
24 the defendant performing oral sex. You can't see R.B.'s
25 face. I only expect --

1 THE COURT: What's this about the other women?

2 MS. FITZGIBBON: He's going to testify that
3 the defendant told him that other women were not allowed
4 in that house.

5 THE COURT: So his answer would be other women
6 weren't allowed in the house. You don't have any
7 problem with that?

8 MR. MOIR: No, but I'm wondering about the
9 video.

10 THE COURT: She's going to try to prove that
11 it was the defendant who was performing oral sex on R.B.

12 MS. FITZGIBBON: And that R.B. is the female
13 in the video.

14 THE COURT: Oh, I'm sorry.

15 MR. MOIR: Trying to prove that R.B. is in the
16 video, I don't think --

17 MS. FITZGIBBON: No.

18 THE COURT: It's a circumstantial thing.
19 Women aren't allowed in the house. This video is
20 obviously made in the house. Because the video was made
21 in the house that other women weren't allowed in the
22 house, it must be the two of them. It's a weak
23 inference but it's logically relevant and it's not
24 prejudicial, so it's minimally relevant, not
25 prejudicial. You can do it.

1 BEFORE THE JURY

2 Q. BY MS. FITZGIBBON: So Mr. Hardy, I asked you
3 did you ever see women, other women other than Lisa and
4 R.B. present in that house?

5 A. No.

6 Q. And do you have personal knowledge of why
7 there were no women in that house? Just say yes or no,
8 please, first.

9 A. Yes.

10 Q. Okay. And what is your knowledge of why there
11 were no women in that house?

12 A. She said that if anybody was going to have sex
13 it would be her.

14 Q. When you say she, who are you talking about?

15 A. Lisa.

16 Q. While you were living there -- if you could
17 please keep your voice up. Lean in a little bit. When
18 you were living in Lisa Biron's residence, did you ever
19 see a recording of R.B. engaged in sexual activity?

20 A. I did not see it.

21 Q. Did you ever hear a recording of R.B. engaged
22 in activity?

23 A. Yes.

24 Q. Tell us about that. What were the
25 circumstances of you listening to a video of R.B.?

1 A. She was talking, Lisa was talking back on the
2 video and you can hear R.B. --

3 THE COURT: Wait. Stop. Get a little closer,
4 speak a little louder.

5 A. I'm sorry. You could hear Lisa in the
6 background and R.B. and the gentleman who also you could
7 hear in the video.

8 Q. Okay. First I'm going to ask you, when you
9 heard this video, where were you?

10 A. I was on the backside of the computer in the
11 living room.

12 Q. You were in the living room of Lisa Biron's
13 house?

14 A. Yes.

15 Q. I think you said you were sitting in the
16 living room?

17 A. Yes.

18 Q. Who was -- and the video is being played on
19 what?

20 A. Her computer, laptop.

21 Q. When you say her, you mean Lisa Biron?

22 A. Lisa, sorry.

23 Q. And who was playing it?

24 A. Lisa was.

25 Q. And you did not view the video, is that what

1 you said?

2 A. I did not.

3 Q. Did Lisa Biron make any statements about the
4 video that she was playing?

5 A. Yes.

6 Q. What did she say?

7 A. She said that she recorded her daughter having
8 sex for the first time.

9 Q. Did she say who she was having sex with?

10 A. A gentleman, I can't remember his name.

11 Q. Did she say where the film was made?

12 A. In Canada.

13 Q. Did she say anything -- what else did she say
14 about her travel to Canada?

15 A. That they were going for a vacation and R.B.
16 was talking to a gentleman on Facebook and that she
17 wanted to lose her virginity and she wanted it recorded,
18 she wanted to record her first time.

19 Q. Did Lisa -- Lisa told you that?

20 A. Yes.

21 Q. And did Lisa say that she did in fact film it?

22 A. Yes.

23 Q. Did Lisa Biron tell you how they first met
24 this person on -- or how they first met this person?

25 A. It was on Facebook.

1 Q. And did she tell you why they decided to go to
2 Canada?

3 A. So R.B. could lose her virginity.

4 Q. Mr. Hardy, are you a member of any gangs?

5 A. Yes.

6 Q. Which gang?

7 A. Crips.

8 Q. The Crips? How long have you been a gang
9 member?

10 A. Since I was 12.

11 Q. Do you have a criminal record?

12 A. Yes.

13 Q. What have you been convicted of?

14 A. Receiving stolen property.

15 Q. Have you been convicted of that more than
16 once?

17 A. Yes.

18 Q. How many times?

19 A. Twice.

20 Q. And where were those convictions?

21 A. Manchester and Merrimack court.

22 Q. Now, have you been promised anything at all in
23 conjunction with your testimony today?

24 A. No.

25 Q. Have I promised you anything?

1 A. No.

2 Q. Has the U.S. Attorney, John Kacavas, promised
3 you anything?

4 A. No.

5 MS. FITZGIBBON: Thank you, Mr. Hardy.

6 THE COURT: Cross-examination.

7 MR. MOIR: Thank you, your Honor.

8 CROSS-EXAMINATION

9 BY MR. MOIR:

10 Q. Good afternoon Mr. Hardy.

11 A. Good afternoon.

12 Q. I'm Jim Moir. I've never met you before, have
13 I?

14 A. No.

15 Q. I guess I'm want to start at the last part
16 first. You're a Crip?

17 A. Yup.

18 Q. Is that like Bloods and Crips?

19 A. Yes.

20 Q. Can you tell the jury what a Crip is?

21 A. Huh?

22 Q. Tell the jury what a Crip is?

23 A. A Crip is a gang member that has rivals with
24 other gangs, they do what they do.

25 Q. And what do they do? I mean, what makes you a

1 Crip versus like the YMCA?

2 A. Well, it's a family and we make money and we
3 fight with rival gangs, it's a family.

4 Q. Okay, into criminal activity, though; right?

5 A. Yes.

6 Q. Absolutely, right? And what kinds of criminal
7 activity?

8 A. Yes.

9 Q. I mean what kinds?

10 A. Violence. Drugs.

11 Q. Now, you were originally contacted in this
12 case, I think I've got a report here says December 7th;
13 right? Do you recall getting a phone call from Agent
14 Gibeley?

15 A. Yes.

16 Q. Okay. And where were you when you got the
17 call?

18 A. I was in Manchester.

19 Q. Okay. And was it on your cell phone?

20 A. Yes.

21 Q. Okay. So all of a sudden a cell phone calls
22 and you find yourself talking to an FBI agent?

23 A. Yes.

24 Q. It's probably not good for a Crip to talk to
25 FBI agents; right?

1 A. No.

2 Q. Were you with any of your buddies when the
3 call came in?

4 A. Yes.

5 Q. Okay, and did they know you were talking to an
6 FBI agent?

7 A. Yes.

8 Q. Probably not too good for your health, is it?

9 A. No.

10 Q. So you're with some buddies. You've got an
11 FBI agent on the phone; right?

12 A. Yes.

13 Q. And obviously you don't know what this guy is
14 calling about; right?

15 A. I did not.

16 Q. Right. And so you talk to this guy and I
17 believe you expected, expressed a rather strong desire
18 not to talk to him; right?

19 A. Yes.

20 Q. You told him in no uncertain terms when you
21 say things like you've been arrested many times, you're
22 aware how the system works; right?

23 A. Yes, sir.

24 Q. And no desire to speak to the FBI. You told
25 them if you want to talk to him, get a subpoena; right?

1 A. Yup.

2 Q. And he kept trying to talk to you; right?

3 A. Yeah.

4 Q. And you kept on saying, hey, I know how the
5 criminal justice system works, I don't have to do
6 anything like this, you know, and finally you hung up on
7 him; right?

8 A. Yup.

9 Q. Okay. It was a pretty short conversation;
10 right?

11 A. Yes.

12 Q. You made it very, very clear you want nothing
13 to do with these people; right?

14 A. Yup.

15 Q. And as a Crip you probably shouldn't be
16 dealing with the FBI; right?

17 A. Yes.

18 Q. Only thing worse would be the DEA; right?

19 A. Yes.

20 Q. Okay. Because your life expectancy can be
21 kind of short; right?

22 A. Yes.

23 Q. Okay. So that was on December 7th. Jump
24 ahead. I all of a sudden got a report from
25 December 26th, the day after Christmas. And you are at

1 the Dunkin Donuts at the corner of Valley and Elm in
2 Manchester; right?

3 A. Yes.

4 Q. And you're having a coffee and a donut?

5 A. Coffee.

6 Q. Okay. And there you meet with two FBI agents;
7 right?

8 A. Yes.

9 Q. So how did that happen? There's nothing in
10 here that says how this happened?

11 A. I called him up and asked him what he wanted.

12 Q. Okay, so when you were private you called him
13 up?

14 A. Yes.

15 Q. Okay. So who did you call?

16 A. I called Mike.

17 Q. Mike Gibeley?

18 A. Yes.

19 Q. Okay, you called him up. How did you get his
20 number?

21 A. It was on my phone.

22 Q. Okay, so you just did basically call back,
23 right, from your phone; right?

24 A. Yes.

25 Q. And you call him up. This is once you're away

1 from your buddies; right?

2 A. Yes.

3 Q. And you call and say I'd like to talk to you;
4 right?

5 A. Yes.

6 Q. Okay. And so you set up a meeting over at
7 Dunkin' Donuts?

8 A. Yes.

9 Q. Okay. You get to the Dunkin' Donuts and you
10 tell them once again I'm a member of the East Coast
11 Crips; right?

12 A. Yes.

13 Q. Have been since you were 12 years old?

14 A. Yup.

15 Q. And then you go on and talk to them, answer
16 their questions; right?

17 A. Yes.

18 Q. Now, in talking to them you certainly admitted
19 to a number of crimes; right?

20 A. Yes.

21 Q. Okay. And did they talk to you about them?

22 A. I'm sorry, can you repeat that?

23 Q. Did they say anything about the crimes you
24 admitted to?

25 A. Um --

1 Q. They say, hey, don't worry about it, we're not
2 interested in that?

3 A. No.

4 Q. They didn't say that. Why were you talking
5 about committing crimes?

6 A. I'm sorry, what?

7 Q. Why did you tell them you were committing
8 crimes? That doesn't sound like a logical thing to do.

9 A. Because I did what I did and it is what it is.
10 I mean, if I did a crime, I'm going to own up to what I
11 did.

12 Q. So being a Crip and all those crimes of
13 violence and drug charges, you're happy just to admit to
14 them, no matter what happens to you?

15 A. I did it, so I'm going to man it. If I did
16 it, I going to own up for what I did.

17 Q. Okay. So you're 25 and you've been a Crip
18 since you were 12; right?

19 A. Right.

20 Q. So you've been more than half your life as a
21 Crip; right?

22 A. Yes.

23 Q. And you only got two convictions?

24 A. Yes.

25 Q. How did you do that?

1 MS. FITZGIBBON: Objection, your Honor,
2 relevance.

3 THE COURT: I'll let you go a little further.

4 Q. Do you remember the question?

5 A. You asked me how I only got two convictions.

6 Q. Yeah.

7 A. I had two convictions.

8 Q. Because you told the police you knew the
9 system inside and out, you've been arrested many times.

10 A. I've been convicted of two crimes.

11 Q. You've been arrested many times, though?

12 A. Yes, I've been arrested.

13 Q. All right, let's go on. You move in -- well,
14 I think you testified on direct you said you moved into
15 the house; right?

16 A. Yup. Basically, yup. I was there every day,
17 so.

18 Q. When you talked to the agents at the Dunkin'
19 Donuts, weren't you very, very clear that you did not
20 live at the house?

21 A. I was there for a month, so technically yes.

22 Q. Excuse me?

23 A. I said I was there for over a month, so
24 technically yes, I was living there.

25 Q. You told the agents you began to live at the

1 residence for a short duration; right?

2 A. Yes.

3 Q. And you said you didn't actually consider it
4 home. You stayed there for periods of time during the
5 day and frequent overnights; right?

6 A. Yes.

7 Q. Okay. You made it very clear I don't live
8 there; right?

9 A. I had another residence.

10 Q. Excuse me?

11 A. I said I have my own place to live, yes.

12 Q. Okay. So you're just visiting there; right?

13 A. Every day.

14 Q. Okay.

15 A. And I slept over just about every night.

16 Q. I'm sorry?

17 A. I said I slept over just about every night.

18 Q. All right. So you were there basically
19 because it was a free place to stay, right, and you got
20 sex?

21 A. I had my own place. I'm 25 years old.

22 Q. Well, you could get drunk and high for free
23 and have sex whenever you wanted; right?

24 A. Yeah.

25 Q. And that's why you stayed there; right?

1 A. Sure.

2 Q. I mean it's not like you were being
3 particularly close to these people; right? I mean, did
4 you talk to them a lot?

5 A. I'm sorry, can you repeat --

6 Q. Did you talk to the people who lived there a
7 lot?

8 A. Yeah.

9 Q. Okay, that would be Lisa and R.B.; right?

10 A. Yes.

11 Q. Okay. And when you had this conversation
12 where you were talking about that Canada trip, who was
13 there, was Brandon there?

14 A. No.

15 Q. Where was Brandon?

16 A. I don't know.

17 Q. All right. So he was, Brandon was not there
18 for this conversation?

19 A. The first conversation, no.

20 Q. Okay. The first conversation?

21 A. Yes.

22 Q. About the trip to Canada, where they said they
23 went up to Canada; right?

24 A. Brandon was not there.

25 Q. Okay. Was he there at the second

1 conversation?

2 A. Yes.

3 Q. Okay, so Brandon was there for the second
4 conversation?

5 A. Yes.

6 Q. Let's get the two conversations straight.
7 What was said in the first conversation?

8 A. That they went up to Canada for R.B. to lose
9 her virginity and for them to record it.

10 Q. Okay, and Lisa said that; right?

11 A. Yes.

12 Q. Did R.B. say that?

13 A. Yes.

14 Q. So R.B. said that too. Were they saying it
15 like together or separately?

16 A. The second conversation they were both in the
17 living room.

18 Q. So who said it?

19 A. R.B. -- I'm sorry R.B. said it and Lisa said
20 it the second conversation.

21 Q. Let's deal with just the first conversation;
22 okay?

23 A. Okay.

24 Q. You're saying one of the two or both of them
25 said we went to Canada so R.B. could lose her virginity

1 and we wanted to record it?

2 A. The first conversation was me and Lisa.

3 Q. Okay, and she said exactly what?

4 A. That they went to Canada for R.B. to lose her
5 virginity and she was going to record it.

6 Q. She was going to record it --

7 A. She recorded it.

8 Q. Or she recorded it?

9 A. She recorded it.

10 Q. Right, she told you she recorded it; right?

11 A. Yes.

12 Q. So, just want to be sure. She didn't say
13 we're going to record it, because they had already been
14 up there; right?

15 A. Yes.

16 Q. Said we recorded it?

17 A. Yes.

18 Q. And how about the second conversation.

19 Brandon was present; right?

20 A. Yes.

21 Q. So how did that one come up?

22 A. She was talking about how R.B. --

23 Q. Let's say who is she?

24 A. Lisa was talking about how R.B. showed Brandon
25 the video and R.B. was talking about how she went to

1 Canada and she lost her virginity and that Lisa recorded
2 it.

3 Q. Right. Basically the same as the first;
4 right?

5 A. Yes.

6 Q. Okay. I just want to be sure I have it
7 correct and the jury knows what was said here, right.
8 And Brandon was there for that one; right?

9 A. Yes.

10 Q. Okay. Let me see if I have anything else. I
11 guess the only other thing is, did you ever have a
12 chance to look at the report that was prepared by Agent
13 Gibeley?

14 A. No.

15 Q. All right. Do you know how he reported -- you
16 just reported a conversation, do you know what he said?

17 A. No.

18 Q. Let me see if I can find it here. All right,
19 I'll leave it at that. Thank you very much. I have no
20 other questions.

21 THE COURT: Any redirect?

22 MS. FITZGIBBON: Nothing further.

23 THE COURT: Thank you, sir, you can step down.
24 Call your next witness, please.

25 MR. KAVACAS: Thank you, your Honor. The

1 United States calls Lisa Brien.

2 THE CLERK: Step into the witness box and
3 raise your right hand.

4 LISA BRIEN

5 having been duly sworn, testified as follows:

6 THE CLERK: Thank you. Would you please state
7 your name and spell your last name.

8 THE WITNESS: Lisa Brien, B-R-I-E-N.

9 THE CLERK: Thank you. You may be seated.

10 DIRECT EXAMINATION

11 BY MR. KAVACAS:

12 Q. Hi, Lisa. I'm going to pour you a cup of
13 water.

14 A. Thank you.

15 Q. Lisa, I'm going to be standing back here and
16 asking you questions from here, and I'm going to ask you
17 to keep your voice up, because if I can hear you, it's
18 likely the jurors can hear you too; okay?

19 A. Okay.

20 Q. Lisa, where are you from?

21 A. I live in Manchester, New Hampshire.

22 Q. Okay. And who do you live in Manchester with?

23 A. My husband, Norm. He's in the back.

24 Q. He's in the back?

25 A. Yeah.

1 Q. Oh. There he is. Lisa, do you know the
2 defendant, Lisa Biron?

3 A. Yes, I do.

4 Q. How long have you known her?

5 A. At least 12 years.

6 Q. Do you see her in the courtroom here today?

7 A. Yes.

8 Q. Can you just point her out and tell us what
9 she's wearing?

10 A. She's wearing a black suit jacket with a tank
11 top underneath.

12 Q. Thank you. How did you meet the defendant?

13 A. We were going to the same church.

14 Q. Okay. And in going to the same church, how
15 did you establish a relationship?

16 A. Well, not only were we being mentored by the
17 same person, the same woman, but we also were members of
18 what they call home group, which is just an extension of
19 the church where you gather, you know, during the week
20 to talk over what, you know, what went on in church on
21 Sunday.

22 Q. When was it that you met her in church, was it
23 12 years ago or was it some time after that?

24 A. No, it was 12 years ago.

25 Q. And at the time was she married?

1 A. Yes.

2 Q. Did you know her husband?

3 A. Yes.

4 Q. What was his name?

5 A. Michael.

6 Q. And were you married?

7 A. At that time, no.

8 Q. Can you describe your relationship with the
9 defendant and how it grew, if it did?

10 A. Well, yeah, I became, like I said, we were
11 close because we were being mentored by the same person.

12 Q. Did you socialize with one another?

13 A. Yes. We had gatherings, barbecues, I had gone
14 over and had dinner many times with her and her child.
15 My daughter would play with her --

16 Q. Okay, let me stop you there. So you know the
17 defendant's daughter?

18 A. Yes, I do.

19 Q. Okay. Lisa, let me advise you that for
20 purposes of this trial we're referring to the
21 defendant's daughter as R.B.; okay?

22 A. Okay.

23 Q. How long have you known R.B.?

24 A. Twelve years.

25 Q. Okay. Now, at some recent point in time did

1 this close friendly relationship that you had with the
2 defendant change in any way?

3 A. Yes.

4 Q. Okay, tell us how and when?

5 A. Back in June -- I mean July 4th, it was a
6 Fourth of July party, not this summer, the summer
7 before, so we were all over her house for a barbecue
8 with her and her husband and her dad and some friends
9 from church.

10 Q. And this was in July of 2011?

11 A. Yes.

12 Q. Okay. What about July, that July party at her
13 house?

14 A. We had a great barbecue. It was nice.
15 Everybody was having a good time. We had fireworks.

16 Q. Did you go with your husband Norm?

17 A. Yes, I did.

18 Q. And what is significant about that barbecue?

19 A. It was within five or six days of that
20 barbecue that Lisa's husband Mike left for the second
21 time.

22 Q. How often would you go to the defendant's
23 house?

24 A. Every few, you know, once or twice a month.

25 Q. How long after that July 4th barbecue?

1 A. I didn't see her again, I don't think I saw
2 her again at all until October of this year.

3 Q. October --

4 A. Last year.

5 Q. October of 2012?

6 A. Yes.

7 Q. And what caused you to see her again after
8 that about 15 months in October of 2012?

9 A. She had left a text message for me at
10 nighttime asking me if I would come to court with her.
11 I had offered to come and, you know, support her.

12 Q. And you said come to court, do you know what
13 had happened to her before she contacted you?

14 A. No. She called me and told me that we needed
15 to talk.

16 Q. Okay. Did you respond?

17 A. I did.

18 Q. What did the defendant tell you?

19 A. A lot of things. She had told me that she had
20 been arrested.

21 Q. She told you she had been arrested?

22 A. Yup. And that her bail was \$35,000 in cash.
23 That they had found pornography, child pornography on
24 her computer. R.B. was, she was separated from R.B.,
25 and --

1 Q. Anything else?

2 A. Not for that particular conversation.

3 Q. Okay.

4 THE COURT: Can I see counsel at sidebar.

5 MR. KAVACAS: Certainly.

6 AT SIDEBAR

7 THE COURT: The witness's husband is at
8 various times vigorously shaking his head and being very
9 demonstrative.

10 MS. FITZGIBBON: I'll talk to him.

11 THE COURT: You go back and tell him if he
12 doesn't remain stone faced throughout the proceeding,
13 I'm going to have to have him removed.

14 MR. KAVACAS: I apologize.

15 THE COURT: That's all right.

16 Q. BY MR. KACAVAS: Okay, Lisa, so you told us
17 about this telephone call that you had with the
18 defendant after she was arrested. Did you have another
19 conversation with her?

20 A. I had conversations with her after she was
21 arrested, yes, other conversations.

22 Q. On the telephone or in person?

23 A. All but one were on the telephone or computer.

24 Q. Okay. In asking questions about what the
25 defendant told you I'm not interested in things

1 unrelated to this case; okay?

2 A. Yup.

3 Q. So, the next time you spoke to her on the
4 telephone, what did the defendant tell you?

5 A. She had told me that her and R.B. had gone,
6 were going to Niagara Falls, and that R.B. --

7 Q. It's okay.

8 A. That, you know, that if you don't take me, I'm
9 going to run away.

10 Q. Who said if you don't take me I'm going to run
11 away?

12 A. R.B. said if you don't take me, I'm going to
13 run away. What she was talking about is that she was
14 going to run away to Canada to a boy that she was
15 texting and, so she asked her mom if her mom would take
16 her up there. She wanted to have her first sexual
17 experience videotaped for prosperity.

18 Q. Who wanted to videotape for prosperity?

19 A. R.B. asked her mom if she could have a video,
20 if she could videotape her having her first time because
21 she wanted to keep it more as a keepsake I think was
22 more of the word.

23 Q. And this is the defendant telling you this?

24 A. Yes.

25 Q. And this was in October of 2012?

1 A. Yes.

2 Q. Okay. Now, you said the defendant told you
3 they were going to Niagara Falls. Were they planning on
4 going after October 2012 to your understanding or had
5 they already gone?

6 A. No, they had already gone.

7 Q. Okay. Do you know when they went?

8 A. Memorial Day weekend I think.

9 Q. You've known R.B. since you've known the
10 defendant, right, 12 years?

11 A. Ah-hum.

12 Q. Do you know how old R.B. is?

13 A. Yes.

14 Q. How old?

15 A. She's 14 now.

16 Q. And what did the defendant tell you about her
17 thoughts about going to Canada to video record her
18 daughter and her first experience?

19 A. She didn't think that there was anything wrong
20 with it. She thought that it was safer I guess than to
21 let her possibly run away and not be able to find her.
22 There was -- she made a comment about something funny
23 happened on the video and they laughed, and she had just
24 told me that they were pictures of them partying.

25 Q. Pictures of who partying?

1 A. R.B., Lisa and this boy Kevin.

2 Q. What did she tell you, what did the defendant
3 tell you about this boy Kevin?

4 A. Besides what I said about him, you know, R.B.
5 wanting to be with him, that he was -- he spent the
6 weekend with them and that they both really loved him.

7 Q. The defendant said that she and R.B. both
8 really loved him?

9 A. Right.

10 Q. Did she tell you how old this kid was?

11 A. Yes. I believe he was 20.

12 Q. You know how old the defendant is?

13 A. Yes.

14 Q. Lisa?

15 A. Yes.

16 Q. How old is she?

17 A. She's 43.

18 Q. Now, you started to talk about a video I think
19 in which something happened, something funny?

20 A. Yeah. She said while she was making, or she
21 was filming Lisa and this boy that something funny
22 happened and that everybody laughed, but she never told
23 me what it was.

24 Q. Lisa, do you still have warm feelings toward
25 the defendant?

1 A. I love Lisa, and I feel really bad.

2 MR. KAVACAS: Thank you. Nothing further.

3 THE COURT: Cross-examination.

4 MR. MOIR: One moment, your Honor.

5 (Mr. Moir consulting defendant.)

6 CROSS-EXAMINATION

7 BY MR. MOIR:

8 Q. Good afternoon. I'm Jim Moir. We spoke for a
9 couple of minutes just a few days ago?

10 A. Yes. Nice to meet you.

11 Q. For two minutes. You were on your way out the
12 door.

13 A. Yes.

14 Q. Now, you had really that last normal barbecue
15 in July of 2011; right?

16 A. (Nods head affirmatively.)

17 Q. And did everything seem normal then?

18 A. Actually yeah, we had a lot of fun.

19 Q. A lot of fun. It was a normal barbecue just
20 like you'd had so many before; right?

21 A. Yes.

22 Q. And you discovered that it was just a couple
23 of days later that Lisa's husband disappeared really;
24 right?

25 A. Yes.

1 Q. I mean, did you find out the circumstances of
2 that?

3 A. Yes.

4 Q. What were the circumstances?

5 A. He said that, like he had the first time,
6 called and said that he was leaving because he wanted to
7 do drugs more than he wanted to be at home and be a
8 husband.

9 Q. And do you know how long he -- did he ever go
10 back home?

11 A. Pardon?

12 Q. Do you know if he ever went back home?

13 A. No, he never went back home after he got out
14 of, after he got out of Teen Challenge.

15 Q. So he wanted to do drugs more than he wanted
16 to be home; right?

17 A. Yup.

18 Q. Prior to that, though, had they seemed like
19 sort of a normal group?

20 A. Yes, except before, the first time that he
21 left.

22 Q. That happened before?

23 A. Right.

24 Q. But you met through a church; right?

25 A. Yes, we did.

1 Q. And was the barbecue basically church people
2 or were there other people as well?

3 A. I believe that this particular one, that I
4 know her mom was there and I believe her dad and his
5 wife, and I think everybody else was from the church at
6 that particular one.

7 Q. Now, after that barbecue did you have any
8 contact with her up until, again, from July of 2011
9 until October of 2012?

10 A. We had spoke on the phone a number of times.
11 We never had any, we never saw each other face-to-face,
12 but talking on the phone as we do as friends and
13 Christians and moms.

14 Q. But you also noted she had changed; right?

15 A. I didn't know, I didn't know anything about
16 how her change was until after she was arrested and she
17 called me because then everything about her was changed.

18 Q. Right. You indicated you love Lisa. I mean,
19 but, hearing all this was kind of shocking, wasn't it?

20 A. Yes.

21 Q. I mean completely shocking?

22 A. It is.

23 Q. You find out that she's been arrested for, you
24 know, by the Manchester Police Department, charged with
25 possessing child pornography; right?

1 A. Yes.

2 Q. And she's going to court. It's in the papers;
3 right?

4 A. Ah-hum.

5 Q. Didn't seem like the same Lisa you knew;
6 right?

7 A. No.

8 Q. And, but you're a friend and she basically
9 talked to you to say this is what I did; right?

10 A. It could be. I constantly over the period of
11 time after Mike left I would always be sending her text
12 messages and e-mails, and they kind of stopped around
13 February maybe and, so I just kept on sending text
14 messages and e-mails.

15 Q. They went into the ozone never to be heard
16 from?

17 A. I didn't hear from her. I shouldn't say that.
18 Occasionally she'd send me I love you too, we're fine,
19 but other than that I couldn't get her to be in contact
20 with me.

21 Q. When she finally, after she got arrested, you
22 know, the wheels had completely come off at this point;
23 right?

24 A. Right.

25 Q. She didn't have her daughter?

1 A. Right.

2 Q. She's all over the press and she's come back
3 to you as a friend; right?

4 A. (Nods in the affirmative.)

5 Q. She's looking for support from a friend?

6 A. Ah-hum.

7 Q. And she tells you about what she's been doing,
8 right, which I know the government's been just asking
9 about; right?

10 A. Yes. It came out little pieces at a time,
11 different times of the day, sometimes 4:00 in the
12 morning.

13 Q. All right. But she was telling you as a
14 friend; right?

15 A. Yeah.

16 MR. MOIR: No further questions. Thank you
17 very much.

18 THE COURT: Redirect?

19 MR. KAVACAS: Nothing, your Honor.

20 THE COURT: Thank you, ma'am, can you step
21 down. Let's go another 15 minutes. Call another
22 witness, please.

23 MS. FITZGIBBON: Your Honor, at this time
24 there's some recorded phone calls where the ID had been
25 stricken. They have been entered by agreement as

1 exhibits. So we would play those phone calls.

2 THE COURT: Okay. When you play the calls,
3 identify the exhibit number, okay?

4 MS. FITZGIBBON: Yes, your Honor.

5 THE COURT: You're not going to need to have
6 anybody to testify about them?

7 MS. FITZGIBBON: I think there's a stipulation
8 we can prepare before the end of the trial that defense
9 counsel stipulates that this is the voice of the
10 defendant.

11 THE COURT: All right. Are you prepared to
12 stipulate that the voice, one of the voices on the
13 telephone call is the defendant?

14 MR. MOIR: Yes. We discussed that with the
15 government. We agreed to do so, your Honor.

16 THE COURT: All right. Thank you.

17 MS. FITZGIBBON: I would ask that Exhibit No.
18 10A be played, please.

19 (Audio being played.)

20 THE COURT: Are we going to have any context.
21 When was this phone call? Who was the other person
22 speaking on it? Is somebody at some point going to
23 identify that or would that be in the subject of the
24 stipulation?

25 MS. FITZGIBBON: It will be in the

1 stipulation, your Honor. And I can state that all of
2 the phone calls that you will hear were recorded in
3 December of 2012.

4 THE COURT: All right. Thank you. Are you
5 going to play the next one?

6 MS. FITZGIBBON: Yes, your Honor.

7 THE COURT: What exhibit number?

8 MS. FITZGIBBON: That will be 10B.

9 (Audio being played.)

10 MS. FITZGIBBON: 10C.

11 (Audio being played.)

12 MS. FITZGIBBON: The next is 10D.

13 (Audio being played.)

14 MS. FITZGIBBON: 10E.

15 (Audio being played.)

16 MS. FITZGIBBON: And the final exhibit is 10F,
17 your Honor.

18 (Audio being played.)

19 MS. FITZGIBBON: We do have one witness. We
20 will check on his availability. It would be appropriate
21 to take a break now, your Honor, and then we'll have
22 that witness ready to go.

23 THE COURT: All right. Are you going to have
24 enough witnesses to -- are you going to complete your
25 case today?

1 MS. FITZGIBBON: I think, your Honor, there
2 will be only one more witness left for tomorrow. I
3 think we can do the rest.

4 THE COURT: Okay, we will take a 15-minute
5 break, ladies and gentlemen.

6 (Recess taken.)

7 THE COURT: Call your next witness.

8 MR. KAVACAS: Your Honor, the United States
9 calls Richard Nanan.

10 THE COURT: Come on up here, sir, stand right
11 over here by the witness stand and this gentleman will
12 tell you what to do.

13 THE CLERK: Stand and raise your right hand.

14 RICHARD NANAN

15 having been duly sworn, testified as follows:

16 THE CLERK: Would you please state your name
17 and spell your last name for the record?

18 THE WITNESS: Detective Richard Nanan,
19 N-A-N-A-N.

20 THE CLERK: Thank you. You may be seated.

21 DIRECT EXAMINATION

22 BY MR. KAVACAS:

23 Q. Good afternoon, Detective Nanan.

24 A. Good afternoon.

25 Q. What do you do for a living?

1 A. I'm a detective with the Manchester Police
2 Department.

3 Q. How long have you been employed by the
4 Manchester Police Department?

5 A. Fourteen years.

6 Q. What do your duties involve as a detective?

7 A. Investigate crimes. Mainly I'm assigned to
8 the Child Abuse Sexual Exploitation Unit.

9 Q. And how did you become involved in this case?

10 A. I became involved, Manchester police initially
11 took a report from a Brandon Ore on September 28th,
12 2012, and I got assigned that case.

13 Q. And did you speak to Brandon Ore?

14 A. I did.

15 Q. And based on the information Brandon Ore
16 provided you, what did you do?

17 A. Based on the information that I obtained from
18 him I was able to apply for a search warrant.

19 Q. For what?

20 A. For a certain laptop computer belonging to
21 Lisa Biron.

22 Q. Okay. When you were able to get that search
23 warrant, what did you do?

24 A. After receiving the search warrant, the search
25 warrant was executed that day.

1 Q. Where was it executed?

2 A. At Lisa Biron's residence, 42 Pratt Court in
3 Manchester.

4 Q. Was she there?

5 A. She was there.

6 Q. And what were you looking for?

7 A. Specifically information from Brandon Ore of a
8 gray laptop, HP laptop computer.

9 Q. Did you find that laptop computer at Lisa
10 Biron's house?

11 A. Yes. I located it in the living room on a
12 coffee table where Brandon Ore had stated it may be.

13 Q. Brandon Ore told you where it might be?

14 A. Yes.

15 Q. And that's where you found it?

16 A. That's correct.

17 Q. I'm showing you what's been marked as
18 Government's Exhibit 9A for ID. Do you recognize what
19 that is?

20 A. I do.

21 Q. What is it?

22 A. It's the laptop computer that I seized that
23 day.

24 Q. Once you seized this laptop computer, what did
25 you do with it?

1 A. Returned to the Manchester Police Department
2 where it was entered into evidence.

3 Q. And after it was entered into evidence did you
4 see it again?

5 A. I did not.

6 Q. Do you know whether or not it ever left the
7 custody of the Manchester police?

8 A. To my knowledge only when it was released to
9 the FBI.

10 MR. KAVACAS: Thank you. Nothing further.

11 THE COURT: Thank you. Any cross-examination?

12 MR. MOIR: A couple of questions.

13 CROSS-EXAMINATION

14 BY MR. MOIR:

15 Q. Hi, detective.

16 A. Good afternoon.

17 Q. Attorney Jim Moir. That laptop, obviously,
18 you seized it pursuant to the warrant, brought it back
19 and entered into evidence; right?

20 A. Correct.

21 Q. And there's a protocol for that; right?

22 A. Yes.

23 Q. In the evidence logs?

24 A. Yes.

25 Q. Can you just tell the jury how exactly that's

1 done. You bring it back, you bring it to the, what,
2 evidence tech?

3 A. Bring it back to the police department, enter
4 it into the computer as evidence, give it a number,
5 which I gave it I believe RN1, and at that time it's
6 logged into evidence but it was also submitted or left
7 in possession of our computer forensics guy.

8 Q. So it was left with the computer forensics
9 person. Do you know what that person did?

10 A. That person examined the computer.

11 Q. Okay. And this is all before it went to the
12 FBI?

13 A. Correct.

14 Q. Okay, thank you. Now, obviously you had more
15 investigation than that; right?

16 A. Yes.

17 Q. It's not just doing the warrant, you were in
18 fact in charge of this investigation; right?

19 A. Yes.

20 Q. That was prior to the FBI becoming involved;
21 right?

22 A. Yes.

23 Q. The FBI was in, what, a month later, weeks
24 later, if you recall?

25 A. Within a week.

1 Q. And during that time you were in charge before
2 they became involved; right?

3 A. Yes.

4 Q. There's a person named L.B. in this case. Do
5 you know who I'm referring to? That would be the victim
6 in the case?

7 A. R.B.

8 Q. Did I say L.B.? R.B., thank you very much.
9 R.B., do you know what I'm talking about?

10 A. Yes.

11 Q. I'm really not trying to confuse you, I'm just
12 confusing myself. By the way, I hear that people don't
13 hear me. If I'm not speaking loudly enough, just wave
14 your hand or something like that. I do drop off
15 sometimes. Sorry, judge.

16 THE COURT: That's all right.

17 Q. So R.B., was she interviewed?

18 A. She was interviewed.

19 Q. Okay. And so she was interviewed; right?

20 A. Yes.

21 Q. Okay. You didn't do the interview; right?

22 A. I did not.

23 Q. It was done by a child --

24 A. Forensic interviewer.

25 Q. A forensic child interviewer; right?

1 A. Yes.

2 Q. And to your knowledge, how many times was she
3 interviewed?

4 A. Once.

5 Q. Okay, very good. Thank you.

6 MR. KAVACAS: Nothing further, your Honor.

7 THE COURT: Thank you, sir, you can step down.
8 Call your next witness.

9 MS. FITZGIBBON: Call Special Agent Michael
10 Gibeley, your Honor.

11 THE CLERK: Please raise your right hand.

12 MICHAEL GIBELEY

13 having been duly sworn, testified as follows:

14 THE CLERK: Thank you. Would you please state
15 your name and spell your last name for the record.

16 THE WITNESS: My name is Michael Gibeley,
17 G-I-B-E-L-E-Y.

18 DIRECT EXAMINATION

19 BY MS. FITZGIBBON:

20 Q. Good afternoon. How are you employed?

21 A. I'm a special agent with the Federal Bureau of
22 Investigation.

23 Q. How long have you been with the Federal Bureau
24 of Investigation?

25 A. I'm in my sixteenth year.

1 Q. Where are you currently assigned?

2 A. Portsmouth, New Hampshire resident agency
3 office.

4 Q. And what area do you cover for jurisdiction?

5 A. I cover the state of New Hampshire, ma'am.

6 Q. In the fall of 2012 did you become involved in
7 the investigation into Lisa Biron?

8 A. Yes, ma'am, I was.

9 Q. How did you become involved?

10 A. Received a telephone call from my supervisor
11 instructing me to report to the United States Attorney's
12 Office to meet directly with the United States Attorney.
13 It was October 15, 2012. At that time I was instructed
14 to -- or instructed to open a federal investigation
15 regarding the information provided by a Manchester
16 police report involving the defendant.

17 Q. And did you open that investigation?

18 A. Immediately, yes, ma'am.

19 Q. And what did you do in the course of your
20 investigation?

21 A. We conducted numerous interviews of numerous
22 people who had potential information regarding the
23 allegation of child pornography.

24 Q. And did you prepare a search warrant for any
25 materials in this case?

1 A. Yes, ma'am, we applied for a search warrant
2 which was returned I believe it was November 2nd, 2012.
3 The search warrant was executed on the same day for a
4 laptop computer which was alleged to be owned by the
5 defendant, Lisa Biron. I executed that search warrant
6 at the Manchester Police Department and obtained a
7 laptop computer.

8 Q. I'm going to show you what's been marked for
9 identification as Government's Exhibit 9A. Do you
10 recognize this?

11 A. Yes, ma'am, I do.

12 Q. And what is that?

13 A. The laptop computer that I received from the
14 Manchester Police Department.

15 Q. What did you do when you seized that?

16 A. That laptop was seized in the very late
17 afternoon on a Friday. I immediately returned to the
18 Portsmouth, New Hampshire office, locked it in the safe
19 in our office. Monday morning I went back to Portsmouth
20 from my residence, retrieved the laptop, drove it to
21 Boston to the evidence control room and entered it into
22 evidence.

23 Q. And based on your knowledge of this case has
24 that been in FBI custody since that date?

25 A. Yes, ma'am, it has.

1 MS. FITZGIBBON: Your Honor, I move to strike
2 the ID on Government's Exhibit 9A.

3 MR. MOIR: No objection.

4 THE COURT: Without objection.

5 MS. FITZGIBBON: Thank you, your Honor.

6 (Government's Exhibit 9A admitted.)

7 Q. BY MS. FITZGIBBON: Is it your understanding,
8 Agent Gibeley, does that laptop computer contain a hard
9 drive?

10 A. Yes, ma'am.

11 Q. And did you ever remove that from the
12 computer?

13 A. No.

14 Q. Based on your recent investigation in this
15 case, is that hard drive still installed in that
16 computer?

17 A. Yes, ma'am.

18 Q. And are you aware how that's been marked as
19 Government's Exhibit 9B?

20 A. I'm sorry, ma'am?

21 Q. Are you aware that that's Exhibit 9B?

22 A. I am.

23 MS. FITZGIBBON: Your Honor, I'd move to
24 strike the ID sticker on 9B and move it into evidence.

25 MR. MOIR: No objection.

1 THE COURT: Without objection.

2 MS. FITZGIBBON: Thank you, your Honor.

3 (Government's Exhibit 9B admitted.)

4 Q. BY MS. FITZGIBBON: Agent Gibeley, in the
5 course of this investigation did you prepare any further
6 search warrants?

7 A. Yes, ma'am. An additional search warrant was
8 applied for and executed on November 16th at the
9 residence of the home as well.

10 Q. And what did that search warrant seek to
11 obtain?

12 A. Any and all evidence that was pertinent to
13 child exploitation, specifically for electronic devices,
14 paperwork, thumb drives, laptops, CDs, DVDs, cameras, et
15 cetera.

16 Q. And was evidence of that nature seized on the
17 day you just testified to?

18 A. Yes, ma'am, it was.

19 MS. FITZGIBBON: If I could have just one
20 moment, your Honor.

21 (Pause.)

22 Q. I'm going to show you what's been marked for
23 identification as Government's Exhibit 8.

24 A. Yes, ma'am.

25 Q. Do you recognize that?

1 A. I do.

2 Q. How do you recognize that?

3 A. I know that's the iPhone that was taken --
4 that iPhone was actually in Lisa Biron's vehicle or the
5 vehicle that she showed up in at Manchester court that
6 day. I was with Ms. Biron placing her under arrest at
7 the time and we seized that phone at that time from the
8 vehicle that she showed up in.

9 Q. Did you personally seize that phone?

10 A. I did. It was provided to me, but yes.

11 Q. And what did you do with it?

12 A. Same thing. After we went to the arraignment,
13 returned it back to the Portsmouth resident agency
14 office, it was locked up, and then it was brought to
15 Boston for process in the evidence control room.

16 Q. Has that phone been in the custody of the FBI
17 since the day that you seized it?

18 A. Yes, ma'am.

19 MS. FITZGIBBON: Your Honor, I'd ask to strike
20 the identification on Exhibit 8.

21 MR. MOIR: No objection.

22 THE COURT: Without objection, it may be
23 admitted.

24 (Government's Exhibit 8 admitted.)

25 MS. FITZGIBBON: Thank you. I have nothing

1 else.

2 THE COURT: Cross-examination.

3 CROSS-EXAMINATION

4 BY MR. MOIR:

5 Q. Agent Gibeley, we actually chatted a bunch of
6 times, haven't we?

7 A. Yes, sir, we have.

8 Q. During the course of this investigation? You
9 agree with me that the FBI is a pretty thorough
10 organization?

11 A. Yes, sir, it is.

12 Q. Tries to be, at least; right?

13 A. We do our best, sir.

14 Q. Okay. When you executed the search warrant at
15 the 42 Pratt Street house, obviously you had a warrant
16 that was broad enough, as you said, to get any
17 electronic devices, any media storage, anything like
18 that; right?

19 A. Yes, sir, but just to clarify, I was not
20 present at 42 Pratt Street. I was with the defendant.

21 Q. Okay. So who was actually conducting the
22 search then?

23 A. Numerous agents and officers from numerous
24 departments.

25 Q. And as part of your -- you're the head agent

1 in this case?

2 A. I'm the assigned case agent, sir. A lot of
3 very good agents worked on this.

4 Q. I understand, but are you sort of the one who
5 coordinates this investigation?

6 A. I'm the case agent, sir.

7 Q. Okay. I'm not sure what a case agent is, but
8 that's why I'm asking.

9 A. Yes, sir.

10 Q. You did review the items that were seized from
11 the Pratt house; right?

12 A. Yes, sir, I did.

13 Q. Okay. And there was quite a lot; right?

14 A. Quite a lot.

15 Q. As far as you were talking about, you know, a
16 lot of media storage; right?

17 A. Yes, sir.

18 Q. And there was a return from that search,
19 right, that was prepared?

20 A. Yes, sir, it was.

21 Q. And can you tell the jury what a return is?

22 A. A return is an inventory essentially of what
23 is returned, what is taken out of that house, or that
24 location or whatever, the fruits of the search.

25 Q. So you got a list something like this; right?

1 A. Yes, sir.

2 Q. Okay. And on this you seized a number of
3 cameras; right?

4 A. I guess a number would be fair, yes, sir. I
5 mean, depends how you define cameras, but sure.

6 Q. Well, you had certainly a digital video
7 cameral; right?

8 A. Yes, sir, we did.

9 Q. That's number one on the list; right?

10 A. Sir, I'd have to look at the list to tell you
11 what number it would be.

12 MR. MOIR: Can I approach, your Honor?

13 THE COURT: Yes.

14 MR. MOIR: I'm not trying to make it a
15 guessing name.

16 A. I don't know the numbers off the top of my
17 head, sir.

18 Q. Sure. Just showing you this. This looks like
19 a copy of the return?

20 A. This is, yes, sir, this was -- in addition to
21 this is one of the returns that we had, but yes.

22 Q. Okay. But just going through that you can see
23 lots and lots of thumb drives and things like that?

24 A. Yes, sir.

25 Q. I mean, just going through there how many

1 would you say there are?

2 A. How many thumb drives would I say there were,
3 sir?

4 Q. Yes, exactly.

5 A. There were several, sir.

6 Q. And also there were other things for digital
7 media; right?

8 A. Yes, sir, there was.

9 Q. I mean, wouldn't you say there's a lot; right?

10 A. I would say it was a lot.

11 Q. Has anybody reviewed all these things?

12 A. Yes, sir, I've reviewed just about every item
13 on this list.

14 Q. Okay. And of those things that were again
15 digital images that come up here, how many would you say
16 you viewed during the course of this investigation from
17 this, just from here?

18 A. How many of the electronic devices here did I
19 view?

20 Q. How many pictures did you see from these
21 things?

22 A. Oh --

23 Q. Thousands and thousands; right?

24 A. Sir, I couldn't even -- a very large number is
25 the best answer I can give.

1 Q. Sort of mind boggling after a while; right?

2 A. I don't know if I would characterize it as
3 mind boggling, sir, but it was a large number of
4 pictures, a very large number of pictures.

5 Q. Did you find pictures, for example, of Niagara
6 Falls?

7 A. I did.

8 Q. How many were there of Niagara Falls, of the
9 falls?

10 A. Sir, I honestly don't remember the number of
11 Niagara Falls pictures. I can tell you for certain that
12 I saw them.

13 Q. Okay. And pictures taken from the Maid of the
14 Mist, for example?

15 A. I was not familiar with that, sir, so I didn't
16 know what that was.

17 Q. Okay. That's a boat underneath the falls?

18 A. Sir, I was a Coast Guard officer, I understand
19 the boats.

20 Q. Okay. But again, you saw, you know, lots of
21 pictures?

22 A. Yes, sir, I did.

23 Q. How many videos did you review, if you recall,
24 I mean hours worth?

25 A. For digital evidence, yes, sir. I don't know

1 about hours, but there were many video clips at varying
2 lengths.

3 Q. The only other thing I want to ask you, agent,
4 you also reviewed some of the investigation done by
5 Manchester before you got involved; right?

6 A. I received one piece of paper from them, sir,
7 with approximately two to three paragraphs total.

8 Q. Okay, I'm talking about even afterwards,
9 later?

10 A. Never.

11 Q. Okay. You are aware that they had R.B.
12 interviewed?

13 A. I am aware. I did see the -- I received a --
14 I was allowed to view that interview, I was not allowed
15 to take a copy when I first saw it.

16 Q. Okay. And you're aware that she was
17 interviewed twice, correct, by them?

18 A. I'm sorry -- she was interviewed twice by
19 Manchester?

20 Q. Yes.

21 A. I don't think that's accurate, sir.

22 Q. Okay.

23 A. She was interviewed a second time by an FBI
24 child forensic interviewer and I was present for that.

25 Q. Sorry about that, I stand corrected. Once by

1 a Manchester forensic child interviewer; right?

2 A. Yes, sir.

3 Q. And then a second time by an FBI forensic
4 child interviewer; right?

5 A. Yes, sir.

6 Q. Where was that FBI interviewer out of, just
7 out of curiosity?

8 A. She's assigned to the Boston division.

9 Q. And then you interviewed her personally;
10 right?

11 A. I did, sir.

12 MR. MOIR: Thank you.

13 THE COURT: Any redirect?

14 MS. FITZGIBBON: No, your Honor, thank you.

15 THE COURT: Thank you, sir, you can step down.
16 Call your next witness.

17 MS. FITZGIBBON: The government calls Michael
18 Biron, your Honor.

19 THE CLERK: Please raise your right hand.

20 MICHAEL BIRON

21 having been duly sworn, testified as follows:

22 THE CLERK: Would you please state your name
23 and spell your last name for the record.

24 THE WITNESS: Michael Biron, B-I-R-O-N.

25 THE CLERK: Thank you. You may be seated.

1 DIRECT EXAMINATION

2 BY MS. FITZGIBBON:

3 Q. Good afternoon, sir.

4 A. Hello.

5 Q. Just a couple of instructions. Will you
6 please when you're speaking try and speak up, keep your
7 voice up, okay. If I can hear you, then the jury can
8 hear you.

9 A. Yeah.

10 Q. It's important that you wait until I finish a
11 question because the stenographer is there taking down
12 everything you say.

13 A. Okay.

14 Q. So, if you wait until I finish and then
15 answer. And also make sure that your answers are
16 audible, okay, because she can't take down shakes of the
17 head or nods.

18 A. Okay.

19 Q. Where you from, Mr. Biron?

20 A. Williamsburg, Virginia.

21 Q. Okay, that's where you live now?

22 A. Yes.

23 Q. Where were you raised?

24 A. Goffstown, New Hampshire.

25 Q. You lived in New Hampshire and now you live in

1 Williamsburg, Virginia?

2 A. Yes, ma'am.

3 Q. How old are you?

4 A. Forty-four.

5 Q. And what do you do for a living?

6 A. I work for a company that, I do a lot of
7 logistics for the Navy, so like a DOD contractor.

8 Q. Are you married?

9 A. No.

10 Q. Were you ever married?

11 A. Yes.

12 Q. Who were you married to?

13 A. To Lisa Biron.

14 Q. And when were you married?

15 A. 1996. November 23rd, 1996.

16 Q. And for how long were you married to Lisa
17 Biron?

18 A. Approximately 15 years. We just got divorced
19 this past June.

20 Q. Were you living in New Hampshire when you got
21 divorced?

22 A. Yes, ma'am.

23 Q. Would you like a glass of water?

24 A. No, I'm okay right now.

25 Q. And during the course of your marriage did you

1 have any children?

2 A. Yes.

3 Q. How many children?

4 A. One daughter.

5 Q. And when was she born?

6 A. May 1998.

7 Q. Were you present for her birth?

8 A. Yes.

9 Q. I'm going to show you what's been marked as
10 Government's Exhibit 1B.

11 THE COURT: The jury's monitor is not on.

12 Okay.

13 Q. Okay. And can you tell me who that is?

14 A. That's my daughter.

15 Q. And if I ask you questions about your
16 daughter, we're going to refer to her as R.B. Is that
17 okay?

18 A. Yes.

19 Q. And so I think you said R.B. was born in May
20 of 1998; is that right?

21 A. Ah-hum.

22 Q. Now, do you speak with Lisa Biron currently,
23 do you have conversations with her?

24 A. No, ma'am.

25 Q. When is the last time that you spoke with Lisa

1 Biron?

2 A. Back in October, as soon as I found out about
3 the stuff that just happened.

4 Q. Okay, that would be October of 2012?

5 A. Yeah, yeah, about that. I don't know the
6 exact date, but it was part of the beginning of October,
7 something like that.

8 Q. Did you ever have any conversation with Lisa
9 Biron about her travel to Canada?

10 A. I did, in May I did -- no, May, April -- April
11 of last year she asked me for my honor points because
12 she was going to take my daughter there for my
13 daughter's birthday present, and I refused because we
14 were in the process of getting a divorce and she already
15 used my honor points prior to that, you know, going
16 other places, so I refused, and she was upset with me
17 about that, but that was that.

18 Q. You're saying one word I just didn't
19 understand, I'm sorry. Honor points?

20 A. Yeah, yeah, Hilton honor points. You know, if
21 you travel a lot, like you get frequent flyer miles or
22 if you go to a hotel you get points for staying there.

23 Q. Okay, Hilton?

24 A. Hilton, yes, ma'am.

25 Q. Did she say when she was asking you for this,

1 did she say anything about her plan to travel to Canada?

2 A. Yeah, she said she wanted to take R.B. there
3 for her birthday.

4 Q. Did she say how she was going to travel there?

5 A. At that point no, no, she didn't.

6 Q. Now, you say that you were married to Lisa
7 Biron for 14 years; is that correct?

8 A. Fourteen, 15 -- 14, 15 years, yeah, just up
9 until this past June, so.

10 Q. And you lived with her until the summer of
11 last year -- I'm sorry, the summer of 2011?

12 A. July of 2011, correct.

13 Q. And did R.B. live with you the entire time as
14 well?

15 A. Yes, ma'am.

16 Q. And what kind of relationship did you have
17 with R.B.?

18 A. I think it was really good, you know, I mean
19 we got along great.

20 Q. So you had daily interaction with R.B.?

21 A. Yes.

22 Q. Now, I'm going to play something for you
23 that's been marked as Government's Exhibit 12 for
24 identification. I'm going to step up here with you for
25 a minute.

1 A. Ah-hum.

2 Q. Put these on, please. I'm going to play a
3 clip. I'm going to ask you to listen to it. And I'm
4 going to ask you if you hear voices that you recognize
5 and tell me when you do.

6 A. Ah-hum.

7 Q. Okay? Okay, now you can put the headphones
8 on.

9 (Audio being played for the witness only.)

10 Q. Can you hear anything?

11 A. Uh-um.

12 Q. Okay. How about yet?

13 A. Uh-um.

14 Q. We're going to ask someone to test the
15 computer. We will try it one more time. How about now?

16 A. Uh-um.

17 THE COURT: Have the paralegal come up and
18 help.

19 A. Now I do. Whoops, stopped again. You have to
20 turn it up. It's too low for me to hear.

21 Q. Okay.

22 (Audio being played for the witness only.)

23 A. That's Lisa. That's my daughter R.B.

24 Q. Okay.

25 A. I don't want to listen anymore.

1 MS. FITZGIBBON: Give me a second, your Honor,
2 I'll close the computer.

3 (Pause.)

4 THE COURT: Can I see counsel at sidebar.

5 MS. FITZGIBBON: Yes, your Honor.

6 AT SIDEBAR

7 THE COURT: What are we doing?

8 MS. FITZGIBBON: This is my plan, your Honor.

9 I am going to ask him to ID that video. Right now --

10 THE COURT: What is the video?

11 MS. FITZGIBBON: It's the sexual assault
12 video. I'm going to ask him to ID it and move it in,
13 and then I'm going to --

14 THE COURT: Members of the jury, just step
15 outside for a minute, please.

16 (Jury exited the courtroom.)

17 THE COURT: Sir, why don't you step down and
18 go outside the courtroom and we will come and get you in
19 a minute.

20 (Witness exited the courtroom.)

21 THE COURT: What are you doing?

22 MS. FITZGIBBON: Your Honor, I have just asked
23 Mr. Biron to identify the voices on that video. It was
24 my intention then, your Honor, I would ask to strike the
25 ID and move that exhibit in as a full exhibit.

1 THE COURT: You're going to play it with him
2 here?

3 MS. FITZGIBBON: No, your Honor, then I was
4 going to ask the court, once the ID was stricken and it
5 was moved in, if he could then -- he was going to
6 identify a very brief portion of a house, and then I was
7 going to ask if we could ask him to, he could be excused
8 once the video was --

9 THE COURT: There's got to be some way we can
10 do this that doesn't involve the drama and the
11 traumatization of the father. I mean, can't we come up
12 with a better way of doing this?

13 MS. FITZGIBBON: Well, your Honor, absent
14 striking the ID, this child --

15 THE COURT: This is a video of what you say is
16 the defendant having oral sex, performing oral sex on
17 the daughter, and you want to play that with the father
18 in the courtroom?

19 MS. FITZGIBBON: Again, your Honor, once the
20 ID was stricken I would ask to play it without. The
21 child's face is not visible, your Honor. Her voice is
22 audible on the tape. There was no one else that really
23 we felt was a witness that would identify her as clearly
24 as the child's father knows the voice.

25 THE COURT: What have you done? You've

1 already played the sound for him?

2 MS. FITZGIBBON: I already played the sound.

3 THE COURT: He has not watched the video?

4 MS. FITZGIBBON: He turned his head away which
5 he -- he has watched a portion of the video in
6 preparation, but he identified the voices, the court
7 reporter I believe took down, he said that's Lisa,
8 that's R.B. I could ask the court to let the record
9 show that he's identified those two voices. He would
10 not have to watch other than --

11 THE COURT: Can we stipulate that the two
12 voices that he's identified are the voices which will be
13 depicted on the tape that he says are Lisa and, and we
14 don't have to play it again for him and have him in the
15 courtroom while you're playing it again.

16 MR. MOIR: I'm more than happy to agree that
17 he's identified the voices as being Lisa and R.B.

18 THE COURT: Yeah. So I don't know why we need
19 to go further than that. He's done it. You know,
20 you've already had the presentation in front of the
21 jury. I don't know why we need to put him through it
22 again.

23 MS. FITZGIBBON: It was my intention to ask
24 that he be allowed to be excused.

25 THE COURT: Now, there's some portion of the

1 video that doesn't depict the two of them --

2 MR. MOIR: Yes -- I'm sorry.

3 THE COURT: -- in a sexual position that you
4 want him to identify?

5 MS. FITZGIBBON: Yes, your Honor, at the very
6 beginning of the video there is the defendant's living
7 room. It's the house that he lived in and can identify.

8 THE COURT: All right.

9 MS. FITZGIBBON: And then we would freeze
10 frame it there.

11 THE COURT: Is there any dispute that this
12 video was taken in the -- appears to have been taken in
13 the living room of the defendant's home?

14 MR. MOIR: Again, I personally can't identify
15 that, so that's why I'm putting the state to their proof
16 on that.

17 THE COURT: All right, all right. Well, then,
18 if that's a contested point and he lived there, you're
19 going to have to show him that first part of it, all
20 right, so queue it up, show the first part of it and
21 then what -- I haven't seen this video, so what does it
22 do, does it cut from some portion of the room to them or
23 something? How does it work?

24 MS. FITZGIBBON: Yes, your Honor --

25 THE COURT: Let me see it. Let me see the

1 beginning of the video, okay?

2 MS. FITZGIBBON: To do this best I'm going to
3 ask Ms. Blanco to come up here and play this for you
4 again.

5 THE COURT: You tell me when you get to the
6 point -- I don't need the audio right now. Just show me
7 the point in which you propose to stop it.

8 MS. FITZGIBBON: Okay, this would be a living
9 room, your Honor.

10 THE COURT: Okay. Are you going to go any
11 further than that?

12 MS. FITZGIBBON: Just that, your Honor, just
13 those couches and wall.

14 THE COURT: Okay. And they appear to be the
15 same couch that's in the picture of the other place, but
16 you don't think -- you're going to put them to their
17 proof that that is where it is.

18 MR. MOIR: That's correct, your Honor.

19 THE COURT: Okay. Well, I don't know any
20 other way to avoid that, then. I want the paralegal up
21 here controlling the computer and she will stop it at
22 the appropriate point, and you're going to say I'm just
23 going to show you the first portion of that video that
24 doesn't depict any individual persons and I want to ask
25 you if you can identify the place that's depicted in the

1 video, all right? So she will stop the video, and he
2 can be excused, and you want to play the video through
3 with the jury, and then we will have a stipulation that
4 the voices that are heard on the video are the voices
5 that the witness earlier testified are the voices of
6 Lisa and R.B., okay?

7 MS. FITZGIBBON: That's correct. Your Honor,
8 I can have --

9 THE COURT: Everybody okay with that?

10 MR. MOIR: I've got no problem indicating that
11 he identified the voices in the background.

12 THE COURT: The voices that are depicted on
13 this video are the ones that he testified were R.B. and
14 Lisa Biron, the defendant.

15 MR. MOIR: That's correct.

16 THE COURT: Okay. You can argue that they
17 weren't, but he's testified that that's what they were.
18 I just don't want there to be any confusion that the
19 voices that he listened to earlier are in fact the
20 voices because if there's any dispute about that, then I
21 will make him watch the video and tell the jury what he
22 heard.

23 MR. MOIR: I was listening carefully and I
24 heard him identify the voices on those videos.

25 MS. FITZGIBBON: Your Honor, if at this point

1 to make things --

2 THE COURT: Can you run this in slow motion
3 because you're not --

4 MS. FITZGIBBON: I can even keep the still
5 frame like that, your Honor.

6 THE COURT: And he can identify the room based
7 on that still frame.

8 MS. FITZGIBBON: I believe so, your Honor.

9 THE COURT: Okay. And we will then stipulate
10 that that's a still frame from the video that the jury
11 will be shown, and that the audio portion that he
12 listened to, the voices that are depicted in the video
13 the jury is going to hear he testified were the voices
14 of Lisa and the -- the defendant and R.B., okay? We all
15 set on that? Why don't you leave that still photo up.
16 Do you have any problem with that?

17 MR. KAVACAS: No, not at all. Before the jury
18 reenters, your Honor, I just want to flag a scheduling
19 issue for the court. Mike Biron was intended to be our
20 last, and this evidence was intended to be our final
21 evidence of the day. We have the FBI CART examiner
22 left. He's coming from Springfield, Mass. He'll be
23 here tomorrow.

24 THE COURT: How long do you think he will be
25 on?

1 MS. FITZGIBBON: Probably one hour or less.

2 THE COURT: And do you anticipate -- I know
3 that you can't commit to anything completely, but do you
4 currently anticipate any witnesses?

5 MR. MOIR: No, your Honor.

6 THE COURT: All right. So in terms of
7 scheduling, I'll have the jury come at nine, we'll do
8 the witness, then we will rest assuming there's no
9 additional testimony, we will take a break and make sure
10 we've got the jury instructions lined up, and depending
11 upon what time we finish we'll either do closing
12 arguments at like 10:30 or at 1 o'clock, depending upon
13 where we are in the process. I think it's probably
14 better to have closings back to back without a lunch
15 break intervening. I don't mind instructing after the
16 lunch break, but I'd like to have the two closings
17 either both before or both after lunch, okay?

18 All right, anything else before we bring the
19 jury back in?

20 MR. KAVACAS: No, your Honor.

21 THE COURT: Want to leave that up on the --

22 MS. FITZGIBBON: Yes, your Honor, it's a
23 matter of keeping the computer awake so it doesn't
24 freeze.

25 THE COURT: All right. So you will reawaken

1 it if you need to. Will it stay on that image if it's
2 reawakened?

3 MS. FITZGIBBON: Yes, your Honor.

4 THE COURT: Okay. Let's bring the witness
5 back in and you can bring the jury back in. I just want
6 to be clear. I'm not precluding the defendant from
7 doing anything. You do whatever you have to do.

8 MR. MOIR: I understand, your Honor.

9 (The witness and jury return to
10 the courtroom.)

11 THE COURT: All right, please continue.

12 Q. BY MS. FITZGIBBON: Mr. Biron, you won't be
13 here that much longer. I do have to ask you just a
14 couple questions totally unrelated to that video, okay?

15 A. Yes.

16 Q. Did Lisa Biron ever tell you that she wanted
17 to take R.B. to Canada for her birthday?

18 A. Um, yeah, ah-hum.

19 Q. And when was R.B.'s birthday, last birthday?

20 A. It was May 4th.

21 Q. Of what year, I'm sorry?

22 A. Oh, just 2011 -- 12.

23 Q. Okay. And did the defendant say then in that
24 conversation how they were going to go to Canada?

25 A. No, but I called, she told me she was going

1 Labor Day weekend or Memorial Day weekend, whatever
2 weekend that is, and I wanted to see possibly if I could
3 watch our dog then, you know, while she was gone, and
4 she said no, my mother is going to watch him she said
5 because I've got to let you go because we have to catch
6 a flight. And I, like, what do you mean you're going to
7 fly? I drove a lot for my old job. I drove to Buffalo
8 and all that. I thought it would be more economical to
9 drive instead of flying. She says no, we're going to
10 fly out of Boston. Now, whether she did or not, I don't
11 know, but that's what she told me, she was going to fly
12 out of Boston.

13 Q. Out of Boston, Massachusetts?

14 A. Yes.

15 Q. Logan Airport?

16 A. I guess, yeah.

17 Q. After that she never did tell you how they
18 traveled?

19 A. No, I tried not to talk to her that much.

20 Q. Okay. I'm going to approach the witness. I'm
21 not going to play this video, Mr. Biron. I'm going to
22 pull up a still. You were shown this video once before,
23 is that correct, or portions of it, the video you just
24 listened to?

25 A. Yes.

1 Q. Okay. I'm going to just ask you to look at
2 the screen, sir, it's just a still shot. Do you
3 recognize what you see on that screen?

4 A. Yeah, that's the love seat in my house and
5 that's a picture and that's the hardwood floor and the
6 TV would be over here, and that would lead to our
7 kitchen.

8 Q. And when you say your house, which house are
9 you talking about?

10 A. Well, it was the house that I bought and that
11 we lived in together until we got divorced.

12 Q. And who resides there currently?

13 A. No one. It's going through a foreclosure.

14 THE COURT: Why don't you just -- do you know
15 the address?

16 A. Yeah, it's 42 Pratt Court.

17 Q. Okay. And was Lisa Biron living there with
18 R.B. after you left?

19 A. Yes.

20 Q. Okay.

21 MS. FITZGIBBON: At this point, your Honor, I
22 would ask that the exhibit, the ID be stricken and it be
23 entered as a full exhibit.

24 MR. MOIR: No objection.

25 THE COURT: Without objection.

1 MS. FITZGIBBON: I would also ask, your Honor,
2 for permission to excuse Mr. Biron at this time. We can
3 bring him back for --

4 THE COURT: For cross-examination. You're
5 done with your direct?

6 MS. FITZGIBBON: I am done.

7 THE COURT: All right, Mr. Biron, could you
8 step out. We're going to play that video. There's no
9 need for you to be present when I do it. We'll bring
10 you back in for cross-examination when we're done.

11 THE WITNESS: Oh, do I go out --

12 THE COURT: Go right back out like you did
13 before. We'll come and get you, okay?

14 (Witness exited the courtroom.)

15 MS. FITZGIBBON: I believe the deputy clerk is
16 going to give the jury headphones, your Honor, for
17 Exhibit 12.

18 THE COURT: Will I need to hear --

19 MS. FITZGIBBON: Yes, your Honor.

20 THE COURT: You have to give me some, too.
21 Have we tested these? The batteries are sometimes --

22 THE CLERK: We have, no, we've tested them.

23 THE COURT: Okay. And someone is going to
24 give instructions to the jurors about how to turn them
25 on. Don't change the station. If you have any

1 questions about whether it's on or not, ask the clerk.

2 The jury monitors need to be turned on.

3 THE CLERK: Okay.

4 THE COURT: All right, you want to play it?

5 (Video being played.)

6 MR. MOIR: Your Honor.

7 THE COURT: Stop. Stop the video. Yes?

8 MR. MOIR: If I can hear it in the

9 courtroom --

10 MS. FITZGIBBON: Yes, your Honor --

11 THE COURT: This is to enhance so that people
12 can hear the voices.

13 MR. MOIR: It's supposed to be heard in open
14 court?

15 THE COURT: Nobody has moved to do otherwise.

16 MR. MOIR: Okay.

17 (Video continuing to play.)

18 THE COURT: All right, stop the video. Is
19 anybody having any problem with theirs cutting in and
20 out?

21 THE CLERK: Your Honor, if you're out of sync
22 with the infrared lights here, you might miss it, just
23 because of where you're sitting.

24 THE COURT: All right, well --

25 THE CLERK: It's an infrared sensor.

1 THE COURT: I need to hear what the jury is
2 hearing. Are you saying like you stand over there you
3 will be able to hear better? All right.

4 (Video being played again.)

5 THE COURT: Let's stop the video for a minute.
6 Can I see counsel at sidebar?

7 AT SIDEBAR

8 THE COURT: I can't stop the government from
9 continuing to play this if the defendant is going to
10 continue to contest ID. I mean, if there are more
11 words, I mean, there's enough in my mind I hear clearly
12 the defendant's voice and the daughter's voice. I don't
13 know why we need to continue to play it, but if there's
14 a dispute about that issue, you're free to contest it, I
15 don't think I can stop the government from just
16 continuing to play it. I just feel like we ought to be
17 playing these things to the minimum extent necessary to
18 satisfy the government's need to prove it's case.

19 MR. MOIR: I agree. The issue in this case, I
20 agree there's plenty there. You have the ID. You have
21 everything else. Obviously if I was the government I
22 would play as much of it as I could.

23 THE COURT: They were willing to stop. Do you
24 think you have enough of the words? Are there more
25 words later in the --

1 MR. KAVACAS: Yes.

2 MS. FITZGIBBON: I think we just got to the
3 point where we heard the voice that the witness
4 identified.

5 MR. KAVACAS: The defendant.

6 THE COURT: But there are more -- there's more
7 speaking?

8 MR. KAVACAS: Yes.

9 MS. FITZGIBBON: I can ask the paralegal
10 perhaps to advance it.

11 THE COURT: Can we advance it to where --

12 MS. FITZGIBBON: I can ask if she can advance
13 because the voices come at the end.

14 MR. KAVACAS: Yeah, that's the problem. The
15 voices that are clear come at the end of this.

16 THE COURT: All right, so do you think you can
17 check with her and maybe advance it to the last like
18 30 seconds.

19 MS. FITZGIBBON: I think we can.

20 MR. MOIR: The last ten seconds is what it is.

21 THE COURT: Again, I want to be clear. I
22 can't stop the government from doing this because the
23 government has to prove beyond a reasonable doubt its
24 case, and if part of its argument is that this was, this
25 video is tied to the defendant showing that she was

1 depicted in it, is going to be important to the
2 government's case. I'm just trying to be sensitive to
3 the victim where I don't end up broadcasting or
4 displaying to anyone more of this than needs to be
5 displayed. That's all I'm getting to. So, you know,
6 subject to depending on what he does on
7 cross-examination or whatever, you can play the whole
8 thing. And of course the defendant can play it over and
9 over again if he wants to. I'm not stopping him from
10 doing anything. But I would ask you to ask the
11 paralegal if you can skip ahead to the last part where
12 the voices are clear and then I'll announce to the jury
13 by agreement we are going to skip ahead and just show
14 the last few seconds of the video.

15 MR. MOIR: I plan no cross-examination.

16 THE COURT: Okay. Thank you. All right.

17 BEFORE THE JURY

18 THE COURT: Members of the jury, this goes on
19 for a while. I'm just going to ask if we can skip ahead
20 because there are voices depicted at the end of the tape
21 and that's the reason for which it's being played, okay?

22 MS. FITZGIBBON: We believe it can be done,
23 your Honor, and it's just go to take --

24 THE COURT: Take the time you need, okay.

25 MS. FITZGIBBON: We believe we've identified

1 the part close to the end of the video.

2 THE COURT: All right, put the headphones back
3 on and hear the last few seconds of this.

4 MS. FITZGIBBON: It's in a slightly different
5 view, your Honor, but.

6 THE COURT: Okay.

7 (Video being played.)

8 THE COURT: If you're done with that. You
9 want to bring the witness back in for cross-examination,
10 or you have no cross?

11 MR. MOIR: I have to questions, your Honor.

12 THE COURT: You can simply excuse the witness.
13 Tell him he's been excused. You have no further
14 witnesses today?

15 MS. FITZGIBBON: That's correct, your Honor.

16 THE COURT: Okay. Members of the jury, we
17 have one more witness tomorrow, a forensic examiner who
18 will testify about examinations he did I guess of the
19 computer. Is that --

20 MS. FITZGIBBON: Yes.

21 THE COURT: So I expect we're going to
22 complete the evidence in the case tomorrow, and in the
23 morning, so we will either have closing arguments in,
24 unless something unexpected happens and sometimes
25 unexpected things can happen, but we'll either have

1 closing arguments in the morning or immediately after
2 lunch depending upon where we are in the process. Okay?

3 So, please keep my general instructions in
4 mind. Don't discuss the case with anybody. Keep an
5 open mind. Don't expose yourself to any discussions of
6 the case in the media. Come back tomorrow a little
7 before 9:00 and hopefully we will get started right at
8 9, okay? So you're excused for the evening.

9 (The jury exited the courtroom.)

10 THE COURT: Does the government have proposed
11 jury instructions?

12 MS. FITZGIBBON: Yes, your Honor. I have a
13 hard copy. They are being ecf'd.

14 THE COURT: Well, why doesn't counsel meet me
15 upstairs in chambers and let's do a quick review of
16 potential instructions now. I will refine them over the
17 weekend. And hopefully before lunch time or maybe,
18 yeah, probably at lunch break I'll have a final set for
19 you. Meet me upstairs and we can go over them, okay?

20 (Court adjourned at 4:05 p.m.)

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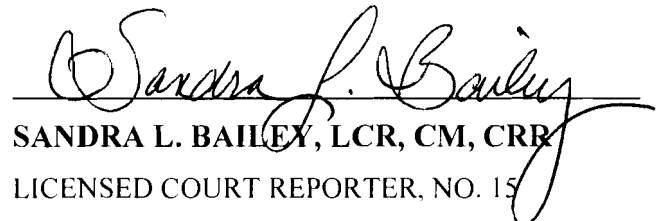
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C E R T I F I C A T E

I, Sandra L. Bailey, do hereby certify that
the foregoing transcript is a true and accurate
transcription of the within proceedings, to the best of
my knowledge, skill, ability and belief.

Submitted: 9/12/13


SANDRA L. BAILEY, LCR, CM, CRR
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STATE OF NEW HAMPSHIRE